

1 IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

2 STATE OF WASHINGTON, )

3 Plaintiff, )

CIVIL ACTION FILE  
NO. 96-2-15056-8 SEA

4 vs. )

5 AMERICAN TOBACCO CO., INC., )  
6 et al., )

7 Defendants. )  
8

9  
10  
11 Deposition of DAVID LEE GORDON taken

12 on behalf of the Plaintiff pursuant to the

13 stipulations agreed to herein, before Barbara

14 Hilger, Registered Professional Reporter,

15 Certified Court Reporter and Notary Public, at

16 King & Spalding, 191 Peachtree Street, Atlanta,

17 Georgia, on the 18th day of November, 1997,

18 commencing at the hour of 9:00 a.m.  
19  
20  
21  
22  
23  
24  
25

Property of: Ness, Motley  
Main PI File Room  
Charleston, SC

COPY

HUSEBY & ASSOCIATES  
AN ~~INDEPENDENT~~ LEGAL SERVICES COMPANY

2931 PIEDMONT ROAD, SUITE A

ATLANTA, GA 30305

(404) 875-0400

FAX (404) 875-2979

<http://www.huseby.com> • email: [rpr@huseby.com](mailto:rpr@huseby.com)

GAINESVILLE, GA / CHATTANOOGA, TN / CHARLOTTE, NC / ASHEVILLE, NC / GREENSBORO, NC / RALEIGH, NC / WINSTON-SALEM, NC / COLUMBIA, SC / GREENVILLE, SC / FLORENCE, SC

Deposition of DAVID LEE GORDON taken  
on behalf of the Plaintiff pursuant to the  
stipulations agreed to herein, before Barbara  
Hilger, Registered Professional Reporter,  
Certified Court Reporter and Notary Public, at  
King & Spalding, 191 Peachtree Street, Atlanta,  
Georgia, on the 18th day of November, 1997,  
commencing at the hour of 9:00 a.m.

**HUSEBY & ASSOCIATES**  
AN **East-West** LEGAL SERVICES COMPANY

2931 PIEDMONT ROAD, SUITE A  
ATLANTA, GA 30305  
(404) 875-0400  
FAX (404) 875-2979

<http://www.huseby.com> • email: [rpr@huseby.com](mailto:rpr@huseby.com)

1	INDEX OF EXAMINATION		
2			Pages
3	Examination by Mr. Herrington .....	4 - 180	
4	Examination by Mr. McGaan .....	180 - 181	

5	INDEX TO EXHIBITS		
6	Exhibit No.	Description	Page
7			
8	1	The Secret of Marlboro Report, dated 4/28/88 .....	88
9	2	Fax dated 5/11/95 .....	108
10	3	PM's Global Strategy: Marlboro Product Technology Report, dated 10/23/92 .....	113
11			
12	4	B&W Quarterly Report July, August, September '95 .....	115
13			
14	5	Review of Nicotine Alkaloids in Tobacco and Smoke .....	124
15	6	Process Department, File Note, dated 4/8/80 .....	130
16			
17	7	Memo from Riehl to Pritchard, dated 3/3/88 .....	134
18	8	RD&E Meeting Report, dated 6/11/85	137
19	9	Further Studies on Nicotine Containing Tobacco Substitutes, dated 7/22/88 .....	140
20			
21	10	Notes on a Visit to B&W R&D, Louisville, 10 through 12 November, 1986 .....	145
22			
23	11	Memo to Reynolds and Riehl from Gordon, dated 3/21/88 .....	149
24			
25	12	Memo to Pepples from Wells, dated 2/17/96 .....	166

1 APPEARANCES OF COUNSEL:

2 On Behalf of the Plaintiff:

3 BRIAN HERRINGTON, ESQ.  
4 Barrett Law Offices  
404 Court Square North  
Lexington, Mississippi 39095  
5 (601) 834-2376

6 On Behalf of Defendant Brown & Williamson Tobacco  
7 Corporation and the witness, David Lee Gordon:

8 ANDREW R. McGAAN, ESQ.  
9 Kirkland & Ellis  
200 East Randolph Drive  
Chicago, Illinois 60601  
10 (312) 861-2183

11 - - -

12 (Disclosure was given and is  
13 attached hereto and made a part  
14 of this deposition.

15

16 DAVID LEE GORDON,  
17 being first duly sworn, was examined and deposed as  
18 follows:

19 EXAMINATION

20 BY MR. HERRINGTON:

21 Q Mr. Gordon, my name is Brian Herrington, and  
22 I'm with Barrett Law Offices in Lexington, Mississippi.  
23 And we represent, one of the firms that represents the  
24 State of Washington in its case against the various  
25 tobacco companies. Mr. Gordon, I've got a cold here, so

1 if you don't understand me or you can't hear me, let me  
2 know and I'll rephrase my question or I'll speak up,  
3 because I want to make sure we understand one another  
4 when we are talking; okay?

5 A Yes, sir.

6 Q Also, for the sake of the court reporter, it  
7 would be helpful if you would make all of your responses  
8 yes or no rather than uh-huh or shaking your head,  
9 because that won't be able to be picked up by the  
10 record.

11 A Yes, sir.

12 Q Could you state your full name for the record,  
13 please.

14 A David Lee Gordon.

15 Q And your address?

16 A [DELETED]

17 Q Mr. Gordon, have you ever been deposed before?

18 A Yes, I have.

19 Q Could you tell me in what context you were  
20 deposed?

21 A It was a civil case between Brown & Williamson  
22 and Philip Morris over patent infringement.

23 Q Over a patent infringement?

24 A Yes, sir.

25 Q Could you tell me what the patent concerned?

- 1           A     Expanded tobacco.
- 2           Q     What exactly is expanded tobacco?
- 3           A     Tobacco that's been puffed in volume.
- 4           Q     Is this in the manufacturing process of
- 5 cigarettes?
- 6           A     Yes, sir.
- 7           Q     Is that one of the stages in that process?
- 8           A     Yes, sir.
- 9           Q     Is that the only time you've been deposed?
- 10          A     Yes, sir.
- 11          Q     Where did you go to high school?
- 12          A     I went to St. Xavier High School. That's in
- 13 Louisville, Kentucky.
- 14          Q     After that, did you go straight to college?
- 15          A     Yes, sir.
- 16          Q     Where did you go to college?
- 17          A     University of Louisville in Louisville,
- 18 Kentucky.
- 19          Q     And did you graduate from there?
- 20          A     Yes, sir.
- 21          Q     What was your degree in?
- 22          A     It was a master of chemical engineering
- 23 degree.
- 24          Q     Master of chemical engineering degree?
- 25          A     Yes, sir.

1 Q Was that the undergraduate diploma? It  
2 sounded like a master level degree, and that's why I'm  
3 asking.

4 A The situation was that we switched from  
5 quarter hours to semester hours while I was in school.  
6 When they did that and added up our hours, they found  
7 out we had enough for a master's degree; but we really  
8 hadn't completed an undergraduate bachelor degree, so  
9 they gave us a master's degree without getting a  
10 bachelor degree.

11 Q Is the net effect of that that you have an  
12 undergraduate degree and master's degree?

13 A No. I just have the one degree, just called a  
14 master of chemical engineering. It's not called a  
15 master of science in chemical engineering. It's called  
16 a master of chemical engineering.

17 Q Just so I'm clear, if someone were to ask you  
18 if you had a master's degree, would you say yes?

19 A I would say yes.

20 Q What did you do after you graduated from  
21 Louisville?

22 A I went to work for Borg-Warner Chemical.

23 Q What year was that?

24 A 1972.

25 Q Did you graduate in May of '72?

1           A     June, maybe May. May or June, yes.

2           Q     Did you work while you were in college?

3           A     Yes, I did.

4           Q     Where did you work?

5           A     Kroger Company.

6           Q     What did you do for them?

7           A     I was a stock boy and a cashier. Also held

8 various co-op jobs as part of the schooling, where you

9 do internships.

10          Q     Where you go to school part-time and then work

11 part-time?

12          A     Yes.

13          Q     With whom did you co-op?

14          A     Tube Turns, Incorporated in Louisville,

15 Kentucky. They are a pipe manufacturer.

16          Q     What did you do for them?

17          A     Plant engineering.

18          Q     You worked in the plant engineering

19 department?

20          A     Yes, sir.

21          Q     What were your responsibilities there?

22          A     Small job designs, process improvements,

23 putting in pipelines.

24          Q     When you say small job design, what exactly

25 does that mean? Drawings?



1           A     Yeah. I was just contrasting that to major  
2     expansions like new buildings or whole new processes,  
3     because as an intern, you wouldn't be there long enough  
4     to see that through, so you worked on small jobs of  
5     improving conveyors or things of that sort.

6           Q     So would that include drafting specifications?

7           A     I did drafting.

8           Q     Drawing?

9           A     Drawing.

10          Q     Any other places you co-oped?

11          A     Yes. Also did Ralston Purina. That's in  
12     Louisville, Kentucky. And Formica Corporation in  
13     Cincinnati, Ohio.

14          Q     What did you do for Ralston Purina?

15          A     I was a laboratory analyst.

16          Q     What would you analyze?

17          A     They made soybeans, and they'd send samples of  
18     the soybean meal in for testing.

19          Q     Were you analyzing the chemical properties of  
20     these products, of these substances?

21          A     Yes, some physical and chemical properties.

22          Q     And then you went to work for whom in  
23     Cincinnati?

24          A     Formica.

25          Q     And what did you do there?

1       A     I worked in their research department on  
2 improving the abrasion resistance of countertop Formica.

3       Q     Mr. Gordon, I am decidedly not a chemist or  
4 engineer, so could you please tell me what type studies  
5 you studied to become a master of chemical engineering.

6       A     All the engineering students at Louisville  
7 took basic courses in chemistry, physics, drafting, of  
8 course, all the humanities and all that stuff as well.  
9 And then as you went into your specialty in your third  
10 year, then you focused on chemical engineering.  
11 Students took chemical engineering courses, as opposed  
12 to civil engineers who took civil engineering courses.  
13 Chemical engineering courses were things like  
14 thermodynamics, heat and mass transfer, unit operations,  
15 process design.

16      Q     And then in 1972 you went to work for  
17 Borg-Warner Chemical Company?

18      A     Yes, sir.

19      Q     Where is that?

20      A     Parkersburg, West Virginia.

21      Q     What was your position with Borg-Warner?

22      A     I was a plant engineer.

23      Q     What were your responsibilities as plant  
24 engineer?

25      A     Small-scale design jobs for our process

1 operations at the plant.

2 Q You say small-scale design jobs for process  
3 operations?

4 A Yes, sir.

5 Q What are process operations?

6 A They made plastic at this location; and some  
7 of the jobs I can remember doing, we had a raw material  
8 come in via rail and we needed to unload the tank cars  
9 of a liquid chemical and put them in storage tanks, so  
10 we had to design a pump and piping system to do that.  
11 We had -- I'm trying to remember the other jobs. It was  
12 20 years ago. We had a pneumatic conveying job that I  
13 worked on. We had a hook-up station to take the solid  
14 plastic to an extrusion line, and you conveyed that with  
15 air pneumatically, so we had to have an appropriate  
16 hook-up station to get the right grade of plastic resin  
17 to the right extruder.

18 Q Did your job responsibilities at Borg-Warner  
19 ever include any research or testing?

20 A No.

21 Q How long were you with Borg-Warner?

22 A Until September of 1973.

23 Q Did you start there in June of '72?

24 A Yes.

25 Q June of '72 to September of '73, you were a

1 plant engineer at Borg-Warner?

2 A Yes, sir.

3 Q Then what did you do in September of '73?

4 A Then I joined Brown & Williamson in September  
5 of '73.

6 Q In September of '73?

7 A Yes, sir.

8 Q And what was your position?

9 A I was an associate process engineer.

10 Q What does an associate process engineer do?

11 A Process development work.

12 Q And what is process development work?

13 A For Brown & Williamson, process development  
14 would include how to more efficiently or less costly  
15 manufacture our products. It would include how to make  
16 sure that you don't change the taste, if you are trying  
17 to improve the cost or improve the taste, if there is  
18 any ability to do that through the processing. Mostly  
19 efficiency effectiveness and cost reduction.

20 Q As an associate process engineer, did you do  
21 any research or testing? Let me rephrase that question.  
22 That was fairly ambiguous.

23 Did you conduct tests as an associate process  
24 engineer, actually conducting experiments?

25 A Yes, I did conduct experiments.

1 Q What type of experiments?

2 A Well, as an example, if you were testing a  
3 process change, you would take samples before and  
4 afterwards with a control sample. Then you would submit  
5 those to our analytical group, get the results back,  
6 compare the results for the test process versus the  
7 control process, and see if you made an improvement. So  
8 that would be a typical experiment.

9 Q When you say see if you made an improvement,  
10 are you talking about an improvement in the cost of the  
11 process or an improvement in the actual product?

12 A It could be either, depending on what the  
13 experiment was focused on.

14 Q Did you do both?

15 A Yes, sir.

16 Q So sometimes you would do experiments to see  
17 if you could make the product better and sometimes you  
18 would do experiments to see if you could do a process  
19 more cheaply?

20 A Yes, sir.

21 Q Did you focus more on one of those areas?

22 A More the cost reduction, efficiency  
23 improvement, those types of things.

24 Q How long were you in this position?

25 A I was in various levels in process and

1 development up until about, I'd say, early to mid '80s.

2 Q Who determined what type of experiments you  
3 would do while you were process engineer, associate  
4 process engineer?

5 A That's difficult to answer, sir. We had a  
6 management structure, and obviously --

7 Q Let's talk about that then. From when you  
8 were -- was your title associate process engineer from  
9 '72 to the mid '80s?

10 A No, sir.

11 Q Why don't you tell me the different titles you  
12 had.

13 A If I can remember them all. I think I moved  
14 to process engineer then from associate. Then I moved  
15 to, I believe, process engineering supervisor. And then  
16 I may have had the title something like section head,  
17 process development, or something of that order.

18 Q Up until the mid '80s or during at the end of  
19 this tenure, this period, you believe you were finally  
20 the section head, process development?

21 A Yes, sir.

22 Q Was all of this in Macon?

23 A No, none of this was in Macon.

24 Q All in Louisville?

25 A All in Louisville.

1           Q     What department were you in from September '73  
2 until the mid '80s?

3           A     Research and development.

4           Q     R&D; is that correct?

5           A     Yes, sir.

6           Q     Who was the head of R&D? I would imagine  
7 there were probably several heads of R&D from '73 to the  
8 mid '80s while you were there; right?

9           A     I believe Bob Sanford was our vice-president  
10 of R&D.

11          Q     Was he the only one during that time?

12          A     He was head of R&D when I joined the company.  
13 I'm not sure if he had the title VP at the time. I  
14 don't recall. He left the company early '80s, retired.

15          Q     When you became section head, process  
16 development, was Sanford still the VP of R&D?

17          A     I don't recall.

18          Q     Who did you report to when you were the  
19 section head of process and development?

20          A     Probably Lance Reynolds, manager at that  
21 point.

22          Q     Was Sanford's first name Bob?

23          A     Bob, yes, sir.

24          Q     What did you do after you were section head of  
25 process development?

1           A     I became planning manager for research,  
2 development, and engineering. Can I go back and correct  
3 that previous one? I think John Jewell was my boss when  
4 I was section head of process development.

5           Q     John Jewell?

6           A     Yes. I think it was John Jewell rather than  
7 Lance Reynolds.

8           Q     You then became planning manager for R&D  
9 sometime in the mid '80s; is that correct?

10          A     Yes, sir.

11          Q     Was that in Louisville?

12          A     Yes, sir.

13          Q     Who did you report to then?

14          A     Al Stone.

15          Q     And what was his title?

16          A     He might have been manager of planning for  
17 RD&E, and I might have been assistant manager of  
18 planning for RD&E.

19          Q     And then what did you do after you were the  
20 planning manager for RD&E or assistant planning manager  
21 for RD&E?

22          A     Then I was planning manager for R&D only.

23          Q     Could you tell me the difference between R&D  
24 and RD&E?

25          A     At one time -- R&D is research and



1 development. The E is engineering. At one time they  
2 were both located in Louisville, both reporting to the  
3 same manager. Engineering then moved to the plant in  
4 Macon, Georgia, so the reporting responsibility for  
5 engineering changed.

6 Q Which moved to Macon?

7 A The engineering group moved to Macon. The  
8 reporting relationship for the engineering group  
9 changed, so now it was planning manager for just R&D.

10 Q What's in Macon?

11 A That is our main manufacturing location.

12 Q Do you know who made the decision for  
13 engineering to be moved to Macon?

14 A No, sir.

15 Q Did somebody at Brown & Williamson as opposed  
16 to British-American Tobacco Holdings, Limited or B.A.T  
17 Industries?

18 A I don't know.

19 Q Is Al Stone still with Brown & Williamson?

20 A No, sir. He's retired.

21 Q Do you know where he lives?

22 A [DELETED]

23 Q Is John Jewell still with Brown & Williamson?

24 A Yes, sir.

25 Q Is he in Louisville?

1           A     No, sir. He's in Macon.

2           Q     Did he go with the engineering department down  
3 to Macon?

4           A     Yes, sir.

5           Q     Do you know what his title is?

6           A     Currently?

7           Q     Yes, sir.

8           A     Senior VP of operations.

9           Q     In Macon? I mean, he's in Macon?

10          A     Yes, sir.

11          Q     We left off with you being the planning  
12 manager for R&D only. What did you do after that?

13          A     I held that position until 1990.

14          Q     And what did you do?

15          A     Then I moved to our corporate offices and took  
16 a role as production planning manager.

17          Q     What does a production planning manager do?

18          A     Allocate the production at the factories, make  
19 sure you have the right type of equipment, capacity to  
20 meet the sales forecast.

21          Q     Do you currently hold that title?

22          A     No, sir.

23          Q     What did you do after you were the planning  
24 manager?

25          A     In 1991, I moved back to the R&D group as

1 manager of reconstituted tobacco development.

2 Q And what were your responsibilities there?

3 A Development of improved reconstituted tobaccos  
4 and development of improved processes for reconstituted  
5 tobaccos.

6 Q And again, when you say improved processes,  
7 you could be talking about improving the product and/or  
8 improving the bottom line of the process?

9 A Yes, sir.

10 Q And what is reconstituted tobacco?

11 A It's a component of cigarettes made from  
12 stems, leaf vines, manufacturing vines.

13 Q What part does it play in the manufacturing  
14 process?

15 A It's a way to take dust that you couldn't put  
16 in a cigarette, for example, and convert it into what  
17 looks like a piece of paper and use that. That allows  
18 you to put that back into the cigarette.

19 Q What do you mean when you say dust?

20 A Dust.

21 Q Dust like would be on your furniture?

22 A Yes, sir.

23 Q You say it's a way to take dust that you could  
24 ordinarily not put in a cigarette?

25 A Yes, sir.

1 Q And allows you to put it in a cigarette. Is  
2 that what you said?

3 A It allows you to change the form of it so it's  
4 suitable to put it in a cigarette.

5 Q Why do you change the form of dust so it's  
6 suitable? Can you not remove it?

7 A You can, but economically you paid however  
8 many dollars per pound for that dust and you'd like to  
9 get the most use out of it.

10 MR. MCGAAN: Just to clarify,  
11 what's the dust made out of it?

12 THE WITNESS: Tobacco. It's  
13 tobacco dust.

14 Excuse me. When you said that about  
15 dust on your furniture, I meant tobacco  
16 dust looked like dust on your furniture,  
17 but it's all tobacco materials.

18 BY MR. HERRINGTON:

19 Q And what was your position after manager of  
20 recon and tobacco development?

21 A In 1994 I took my current role as operations  
22 planning manager.

23 Q Operations planning manager?

24 A Yes, sir.

25 Q And what are your responsibilities now?

1           A     First is to assist in the development of an  
2 integrated plan for our operations departments.

3           Q     Assist in development of integrated plans for  
4 whom?

5           A     For the operations departments.

6           Q     At Brown & Williamson?

7           A     Yes, sir.

8           Q     How many operations departments are there?

9           A     The operations departments are manufacturing,  
10 engineering, R&D, leaf procurement and processing,  
11 purchasing, distribution.

12          Q     Let's talk a little bit about the corporate  
13 structure of Brown & Williamson. Brown & Williamson has  
14 a CEO; correct?

15          A     I believe that's Nick Brooks' title.

16          Q     Or somebody is in charge up there?

17          A     Yes, sir.

18          Q     Could you tell me then what are the, to the  
19 best of your ability, the corporate positions? Who then  
20 would report to the CEO? What I mean by that, I assume  
21 there is then a vice-president. Is that correct? Is  
22 there some vice-president? Isn't there a vice-president  
23 of R&D, for example?

24          A     Yes, there is.

25          Q     What other vice-presidents are there?

1           A     There is a vice-president of leaf,  
2 vice-president of manufacturing, divisional  
3 vice-president of logistics. They all report to the  
4 senior vice-president of operations, which is Dr.  
5 Jewell.

6           Q     John Jewell is senior vice-president of  
7 operations?

8           A     Yes. So in effect the vice-presidents of the  
9 various operations departments report to Dr. Jewell.

10          Q     Does Dr. Jewell report directly to the  
11 president or CEO?

12          A     He reports to Nick Brooks.

13          Q     Are there any corporate offices which are  
14 lateral to the senior VP of operations?

15          A     Yes. There is a finance department, legal  
16 department, marketing, sales department. So those are  
17 the major.

18          Q     You would be within the operations department;  
19 correct?

20          A     Yes, sir.

21          Q     Where do you fit in the chain vis-a-vis  
22 Jewell?

23          A     I report to Jewell.

24          Q     You report directly to Jewell?

25          A     Yes, sir.

1 Q So under the senior VP of operations, you have  
2 you, which is the operations planning manager?

3 A Yes, sir.

4 Q And then you have a manufacturing manager?

5 A VP of manufacturing.

6 Q He's called a VP of manufacturing?

7 A Yes, sir.

8 Q Are you called the VP of operations and  
9 planning?

10 A No, sir. Operations planning manager.

11 Q Is there any significance to the title VP as  
12 opposed to yours, which is just operations planning  
13 manager?

14 A Well, vice-presidents are generally higher in  
15 the food chain than managers.

16 Q But you don't report to the VP of  
17 manufacturing?

18 A No, sir.

19 Q What about logistics? Is that a VP position?

20 A Divisional VP.

21 Q Pardon?

22 A It's called a divisional VP of logistics.

23 Q What other VPs are under the senior VP of  
24 operations?

25 A Vice-president of leaf, vice-president of R&D.

1 of manufacturing had manufacturing equipment,  
2 manufacturing had manufacturing equipment in order to  
3 manufacture the product; is that correct?

4 A I don't think I'd use those words. The VP of  
5 manufacturing is responsible for his plans, which would  
6 have to assure that he has -- or he would have to  
7 propose the plans and say here's what I need in terms of  
8 equipment.

9 Q And he would come to you with that; correct?

10 A No. He's responsible to the senior VP of  
11 operations for his plans. My job is just to take that  
12 information from him and put it into a broader plan.

13 Q The VP of leaf has a plan; correct?

14 A Yes, sir.

15 Q The VP of manufacturing has a plan?

16 A Yes, sir.

17 Q Would you look at those plans to make sure  
18 they weren't overlapping?

19 A Yes, sir. That's part of my responsibility is  
20 to make sure they are integrated.

21 Q If you saw they were duplicating efforts, you  
22 would point out the duplication?

23 A Yes, sir.

24 Q Who would you point that out to? Would you go  
25 to leaf, manufacturing, or would you go to Dr. Jewell?



1           A     Well, the best course of action if you have a  
2     conflict is to try to resolve it with the parties  
3     involved. Obviously, I could go to Dr. Jewell if I  
4     thought that was necessary. It's circumstantial.  
5     Depends on what the issue is.

6           Q     And the vice-president of R&D has a plan;  
7     correct?

8           A     Yes, sir.

9           Q     And you also try to coordinate that plan with  
10    the other departments; correct?

11          A     I would review his top side plan and make sure  
12    it was consistent with the other plans.

13          Q     As part of your responsibilities as operations  
14    planning manager, do you ever meet with employees of  
15    British-American Tobacco Industries?

16          A     No, sir.

17          Q     What about British-American Tobacco Company?  
18    Let me start over. Are you familiar with the various  
19    holding companies of Brown & Williamson?

20          A     Of Brown & Williamson?

21          Q     Yes, sir.

22          A     I'm not aware we have any. I'm not aware we  
23    have any holding companies.

24          Q     Are you aware who the shareholder of Brown &  
25    Williamson is?

1           A     Oh, who we report to? Is that what you are  
2 asking, sir?

3           Q     Right. I'm sorry. I was probably ambiguous.

4           A     We report to British-American Tobacco  
5 Holdings.

6           Q     Do you ever meet with anybody from  
7 British-American Tobacco Holdings?

8           A     Yes, sir.

9           Q     And who is that?

10          A     I meet with Earl Kohnhorst, who is the  
11 operations director for British-American Tobacco  
12 Holdings. I meet with people that report to him. He  
13 has departments such as a manufacturing department.

14          Q     What did you say that Mr. -- is it Mr. or Dr.  
15 Kohnhorst?

16          A     Mr. Kohnhorst.

17          Q     What did you say he does at B.A.T Holdings?

18          A     He's the operations director.

19          Q     Does he hold any other positions within the  
20 BAT Group? And when I say BAT Group, I'm talking about  
21 Brown & Williamson, Souza Cruz.

22          A     Not that I'm aware of, sir.

23          Q     Was Mr. Kohnhorst ever with Brown &  
24 Williamson?

25          A     Yes, sir.

1           Q     When you meet with him, what do you-all talk  
2 about?

3           A     Well, it's like capital expenditure planning  
4 for capacity, product sourcing.

5           Q     Product sources?

6           A     Product sourcing, where would we manufacture a  
7 given product.

8           Q     Product sourcing means where would you  
9 manufacture?

10          A     Where B.A.T Holdings may choose to manufacture  
11 a given product.

12          Q     You mentioned capital expenditure plan.

13          A     Yes, sir.

14          Q     Does Mr. Kohnhorst have the authority to  
15 approve or disapprove that plan?

16          A     No, sir. I believe Brown & Williamson's plan  
17 is Nick Brooks' responsibility.

18          Q     So why do you meet with Mr. Kohnhorst then?

19          A     What you want to do is assure that, once  
20 again, you don't have duplication of expenditure that is  
21 unnecessary.

22          Q     Who would you be duplicating with?

23          A     You might be duplicating with one of the other  
24 manufacturing locations in British-American Tobacco  
25 Holdings.

1           Q     When you say that, are you talking about, for  
2 instance, Souza Cruz?

3           A     Souza Cruz would be included in that.

4           Q     Or the operation in Germany?

5           A     Yes, that would be included in that.

6           Q     You say that Brooks has the responsibility of  
7 saying yea or nay to the capital expenditure plan;  
8 correct?

9           A     Mr. Brooks has responsibility for Brown &  
10 Williamson's total plan as it would go to  
11 British-American Tobacco Holdings. Part of that is our  
12 capital expenditure plan, and other expense or what have  
13 you that falls under Brown & Williamson.

14          Q     Let me just ask you, if you think that Brown &  
15 Williamson needs to make a capital expenditure, would  
16 you then put that in a plan or proposal?

17          A     Yes, sir.

18          Q     And then you would go to the senior VP of  
19 operations, Dr. Jewell, with that plan and proposal?

20          A     Excuse me. Could I go back to that?

21          Q     Sure.

22          A     I wouldn't put that in a proposal when you  
23 said would you. The collective view of operations would  
24 put that in a proposal.

25          Q     Dr. Jewell?

1           A     No. What I'm trying to say is the engineering  
2 group, for example, might be responsible for the capital  
3 proposal preparation itself. I was just directing -- I  
4 was reading your "you" as the collective you as opposed  
5 to the --

6           Q     But you will meet with Mr. Kohnhorst to talk  
7 about capital expenditure plans; correct?

8           A     Yes, sir.

9           Q     When you meet with him, do you meet with him  
10 on an annual basis?

11          A     We generally do this planning once a year,  
12 yes, sir.

13          Q     Do you meet after the plan has been approved  
14 by Brooks or whoever he's given authority to approve it  
15 approves it?

16          A     More or less a parallel process.

17          Q     So before the plan is actually approved, you  
18 meet with Mr. Kohnhorst?

19          A     We may.

20          Q     Do you know of any instance in which something  
21 has come up in the capital expenditure plan that Mr.  
22 Kohnhorst said Brown & Williamson didn't need to do but  
23 Nick Brooks or some other representative of Brown &  
24 Williamson said no, we do need to do this?

25          A     Let me try it the other way maybe to try to

1 answer your question here. A good example of this would  
2 be if we said we need a machine to increase our  
3 capacity, and in reviewing it with Mr. Kohnhorst and his  
4 departments, who can see the available capacity and cost  
5 of all the Brithish-American Tobacco Holdings companies,  
6 there may be a spare machine, let's say, available in  
7 another company that is not being used. The purpose for  
8 review with Mr. Kohnhorst is to identify those  
9 opportunities, so if you've already spent capital on a  
10 machine that is sitting idle, you would be able to look  
11 at the possibility of transferring that machine rather  
12 than spending new capital in Brown & Williamson. That's  
13 the type of thing you can do there. I'm not aware of  
14 instances where one way or the other somebody said you  
15 should or shouldn't do this.

16 Q What if Mr. Kohnhorst says, okay, you don't  
17 need to buy this machine because we've got one sitting  
18 in storage down in Brazil, and you or Nick Brooks said  
19 the last time we got a machine from down there, it  
20 worked a week and it quit, we want to buy our own?  
21 Could Brown & Williamson do that?

22 A I think you would go through a financial  
23 analysis to see what the issues were.

24 Q Who would go through a financial analysis?

25 A Probably ourselves jointly with Mr.

1 Kohnhorst's staff, to say why didn't that machine work.  
2 This is all hypothetical, but we'd probably look at it  
3 why didn't the machine work before, do we have to do an  
4 upgrade, how much does it cost to ship, is it better to  
5 buy a new one, refurbish the old one.

6 Q Who would make the final call?

7 A I believe Nick Brooks would take it to -- if  
8 there is a final dispute, I believe he would take it to  
9 the British-American Tobacco Holdings board.

10 Q Does Mr. Kohnhorst serve on that board?

11 A Yes, sir.

12 Q What if the board said we agree with Mr.  
13 Kohnhorst, you need the machine from Brazil, you don't  
14 need to buy this? Would Brown & Williamson then go buy  
15 it?

16 A No, sir.

17 Q So the board would eventually make the call on  
18 your capital expenditure plan?

19 A Yes, sir, if there was some specific incident  
20 like that that was hypothetical disagreement.

21 Q Is there some dollar amount that brings in the  
22 Kohnhorst review?

23 A I believe there is a dollar amount on the  
24 proposals that has to go to the BATH board.

25 Q Do you have any idea what amount? Obviously

1 you don't have to go to Mr. Kohnhorst to buy pencils, do  
2 you?

3 A As I said, we are not going to Mr. Kohnhorst.  
4 We are going to the B.A.T Holdings board. I am not  
5 certain what that dollar amount is.

6 Q Do you have any idea? Ten dollars, ten  
7 million?

8 A More the latter than the former.

9 Q So even though you're meeting with Mr.  
10 Kohnhorst, it's really the board that's going to make  
11 the decisions on capital expenditure plans; is that  
12 correct?

13 MR. McGAAN: Object;  
14 mischaracterizes his testimony.

15 You can go ahead and answer, if you  
16 have the question in mind. I was just  
17 getting in my objection.

18 A When a specific proposal would come through,  
19 if it were over this dollar amount, then I believe it  
20 would go to the British-American Tobacco Holdings board  
21 for final approval.

22 Q And all I was asking was -- you say you meet  
23 with Mr. Kohnhorst to discuss the capital expenditure  
24 plan; isn't that correct?

25 A Yes, sir.



1 Q And I wanted to make sure I understood you are  
2 not going to Mr. Kohnhorst because Mr. Kohnhorst has the  
3 final authority all to himself. Is he just the  
4 representative of the board with whom you speak?

5 A He has the staff functions that would know of  
6 the capital plans and the available equipment for sale  
7 or available. So that's why you would meet with his  
8 staff to discuss that. That's where the information  
9 resides.

10 Q Are there any other employees of  
11 British-American Tobacco Holdings with whom you meet?

12 A For example, in this review it may not just be  
13 with Mr. Kohnhorst and staff. It might be with other  
14 members, for example, the German company or Brazilian  
15 company or whatever, what have you, involved in some of  
16 these reviews.

17 Q And you say this happens pretty much annually?

18 A Yes, sir.

19 Q You don't meet with them throughout the year?

20 A I personally don't meet with them throughout  
21 the year.

22 Q Do you meet with -- how often do you meet with  
23 anybody else within the BAT Group?

24 A Sir, it depends on the circumstances of --

25 Q Say on average, since 1994, would you meet

1 with them once a month, meet with someone once a month?

2 A No, sir. I think I just took this year as an  
3 example. I've had three meetings.

4 Q What were those three meetings?

5 A Four meetings. Correct that. Four meetings.  
6 Three meetings were on the coordination of a disaster  
7 recovery plan and one meeting was on this review of the  
8 sourcing capital.

9 Q Do you know what the other two were?

10 A I'm sorry. That was all four of them. Three  
11 on disaster recovery.

12 Q What disaster?

13 A Every major operation should have a plan on  
14 how to recover in a significant accidental event,  
15 tornado, hurricane, earthquake, flood, fire, explosion.  
16 And so to do that you have to develop plans and  
17 coordinate those plans with others and how you are going  
18 to implement them in the recovery process.

19 Q With whom did you meet on the disaster  
20 recovery plan?

21 A I'm sorry?

22 Q With whom did you meet?

23 A You want names of individuals?

24 Q Yes, please.

25 A Marco Felix from Brazil.

1 Q Is he with Souza Cruz?

2 A Yes, sir. Tay Kwee Heng T-A-Y, K-W-E-E,  
3 H-E-N-G, Singapore Tobacco; Chris Worthington. He's  
4 with BATCo.

5 Q Let me stop you right there. When you say  
6 BATCo., are you talking about the BATCo. that's in --  
7 let me rephrase it. What are you talking about when you  
8 say BATCo.?

9 A He's in Woking. He's in the office in Woking.  
10 Arno Weiss, that would be W-E-I-S-S, with B.A.T Germany.

11 Q Is that also BATCF?

12 A I think they were once known as BCF. They may  
13 have changed their name. Carlos Wagner, he's at the  
14 Southampton factory.

15 Q Is that factory owned by BATCo.?

16 A That factory reports to the Asia Pacific  
17 region.

18 Q Who is in charge of the Asia Pacific region?

19 A Paul Adams.

20 Q And by whom is Paul Adams employed?

21 A He's Nick Brooks' equivalent for Asia Pacific.  
22 He's on the board of B.A.T Holdings.

23 Q He's on the board of what?

24 A British-American Tobacco Holdings.

25 Q Which is the next company up the line from

1 Brown & Williamson?

2 A Yes. I'm sorry. Could you read me back the  
3 names of who I said so far?

4 Q Sure. Marco Felix, Mr. Heng, Chris  
5 Worthington, Arno Weiss, and Carlos Wagner.

6 A Simon Sparrow. He's with B.A.T Uzbekistan.

7 Q Let me interrupt you for a second. Are all  
8 the people who attended the disaster recovery plan  
9 meetings people, representatives from the different  
10 manufacturing facilities around the world?

11 A Yes, sir. Excuse me. We had one person from  
12 the risk management staff in Woking, John Sellars,  
13 S-E-L-L-A-R-S.

14 Q And that would be BATCo.?

15 A Yeah. He was in Woking.

16 Q Who approves or disapproves the disaster  
17 recovery plan? Let me ask you this: Is the disaster  
18 recovery plan approved or disapproved by anybody?

19 A There is no such thing as a single disaster  
20 recovery plan. Let me try to -- each company then has  
21 to implement their own disaster recovery plan. There is  
22 no single plan that could blanket every factory in the  
23 world.

24 Q So do you just meet and talk about this is  
25 what we do in Louisville and this is what we do in

1 Singapore, this is what we do in Brazil?

2 A Yes, sir.

3 Q And the people in Brazil can say you people in  
4 Singapore, that is the dumbest plan I've ever heard of  
5 in my life, and they can say too bad, that's what we  
6 want to do anyway. Is there no coordinating body that  
7 says we think you need to do it this way?

8 A To use my words, we try to get together and  
9 share best practices. So people may say here is how I  
10 do it, and someone else may say that's a good idea, let  
11 me see if I can try that. Someone else may say that's a  
12 good idea for your situation. That wouldn't work in my  
13 local situation in, for example, Uzbekistan. The  
14 disaster recovery plan spans a lot of issues including  
15 risk management, including an emergency action plan,  
16 including protection of your assets, including recovery  
17 of your assets. So what may work in one part of the  
18 globe doesn't necessarily work in another part of the  
19 globe. In Macon, Georgia we have good relationships  
20 with the local police department and fire department, so  
21 forth. You may not have that in another area. The  
22 infrastructure may not be there. But that location  
23 still has to have a plan, but it's not for me to say  
24 boy, that's a dumb plan.

25 Q Was it for anybody to say that?

1           A     No. In general, we all have responsibilities  
2 in our regions. These people represented individual  
3 regions.

4           Q     Who does Chris Worthington represent? What  
5 region does he represent?

6           A     He's in the European region.

7           Q     What facility is he representing?

8           A     He is representing the region.

9           Q     So you have Arno Weiss, who is there for  
10 BATCF, the manufacturing facility in Germany; is that  
11 correct?

12          A     As well as a representative for Europe.

13          Q     But he's also representing Europe?

14          A     Yes.

15          Q     How many manufacturing facilities does the BAT  
16 Group have in Europe?

17          A     I couldn't answer that.

18          Q     More than one?

19          A     Yes, sir.

20          Q     More than ten?

21          A     Yes, I believe.

22                   MR. HERRINGTON: You need to  
23 take a break?

24                   (Brief recess.)

25          Q     Mr. Gordon, where do you meet with Mr.

- 1 Kohnhorst?
- 2 A This year the meeting was in Macon.
- 3 Q Does it change from year to year?
- 4 A Last year, I guess it was in the U.K.
- 5 Q How many times have you met with him?
- 6 A In what period of time?
- 7 Q Since 1994.
- 8 A Quite a few.
- 9 Q Where have the majority of those meetings  
10 been?
- 11 A Sir, I reported to him in 1994.
- 12 Q Where is Mr. Kohnhorst located?
- 13 A He's currently located in England.
- 14 Q And that's since he became a director at  
15 British-American Tobacco Holdings; right?
- 16 A British-American Tobacco Holdings, yes, sir.
- 17 Q Before that he was at B&W?
- 18 A Yes, sir.
- 19 Q You said, I believe, that your only meetings  
20 really with other representatives from the BAT Group  
21 include the disaster recovery plan meetings and your  
22 capital expenditure plan reviews with Mr. Kohnhorst; is  
23 that correct?
- 24 A This year, yes, sir.
- 25 Q Are there any other reasons why -- let me

1 rephrase that. Do you meet with any representatives  
2 from other BAT Group companies other than the ones we've  
3 talked about here?

4 A I'm not sure that's -- when we talked about  
5 the capital plan, there were other members involved, as  
6 I said, other regions, but that's just other parts. To  
7 know specific companies, I have to go through the list  
8 again.

9 Q Let me narrow it down. Other than other  
10 manufacturing facilities like Souza Cruz or the one in  
11 Germany, Malaysia, wherever, do you meet with any -- let  
12 me rephrase it. Do you meet with anybody from  
13 British-American Tobacco Holdings other than Mr.  
14 Kohnhorst or some other person there regarding capital  
15 expenditure plan reviews?

16 A I meet -- yes, when we have these reviews, we  
17 talk with others from other regions.

18 Q But do you meet for any other purpose other  
19 than to review the capital expenditure plan?

20 A We may review plans that we are going to  
21 accomplish, because your plans may reflect your capital  
22 proposals. We may review processing developments  
23 because they could be reflected in your capital  
24 proposals.

25 Q Would that include research programs?



1           A     From a process development standpoint, we did  
2 talk to the head of Southampton R&D this year, yes.

3           Q     You say for the purpose of process  
4 development?

5           A     Yes, sir.

6           Q     Could you explain what you mean by that?

7           A     The Southampton research and development group  
8 was running an experiment to test out some process  
9 conditions that could affect the capital plans and how  
10 they came out, so we had a phone conversation with the  
11 head of Southampton R&D and his process development  
12 manager, a video phone conference, and discussed the  
13 results of that testing that they conducted.

14          Q     What test was that?

15          A     They did a test of shredding stem versus  
16 cutting stem and test of rotary drying of cut tobacco  
17 versus air drying of cut tobacco.

18          Q     What's the significance of those topics?

19          A     Which is more efficient, which is cheaper,  
20 which is better.

21          Q     When you say which is better, do you mean --

22          A     Which gives better fill value improvement,  
23 particle size distribution of the tobacco, less waste.

24          Q     Are we talking about things that go toward the  
25 commercial success of the product or your costs in

1 making the product?

2 A These tests were all focused on the cost  
3 aspects of the manufacturing process.

4 Q So you weren't testing to see if cutting the  
5 tobacco one way or the other is going to affect the  
6 taste, for instance?

7 A Their testing included sensory testing to make  
8 sure there were no changes, yes.

9 Q And you met with -- who did you meet with at  
10 Southampton?

11 A I'm sorry. As I said, this was a video  
12 conference. It was Graham Read, R-E-A-D, and Steve  
13 Hemsley, H-E-M-S-L-E-Y.

14 Q And which company do they work with?

15 A They both work in Southampton research and  
16 development.

17 Q And that's an arm of BATCo.; correct?

18 A The Southampton research and development  
19 facility reports to Mr. Kohnhorst directly.

20 Q Do you have any other meetings for any other  
21 reason, other than this one in Southampton you just  
22 talked about, the disaster recovery plans or the capital  
23 expenditure plans?

24 A This year we also talked with, again, members  
25 of Mr. Kohnhorst's staff about sourcing of products.

- 1           Q     What products?
- 2           A     Various styles of Viceroy, Lucky Strike, Kent,  
3 John Player, Gold Leaf. There may have been a few  
4 others.
- 5           Q     Were those discussions just where you were  
6 going to make those particular brands?
- 7           A     Yes, sir, where it was cheaper to manufacture  
8 these brands.
- 9           Q     Do you meet with Kohnhorst or his staff on a  
10 regular basis regarding the sourcing of products?
- 11          A     I would say it's more of an ad hoc basis when  
12 there is an issue to be resolved.
- 13          Q     And does Kohnhorst or the board of B.A.T  
14 Holdings make the call on sourcing of product?
- 15          A     If there was a decision to be taken that  
16 wasn't obvious, I would presume so. We haven't had that  
17 situation necessarily come up.
- 18          Q     You say this last time you talked with  
19 Kohnhorst, you discussed Viceroy's?
- 20          A     No, I'm sorry. I said I met with his staff to  
21 talk about that.
- 22          Q     And you-all discussed sourcing of Viceroy  
23 among others; is that right?
- 24          A     Yes, sir.
- 25          Q     Is Viceroy a Brown & Williamson brand?

1           A     Yes, sir. We make Viceroy here.

2           Q     That label, though, the trademark is owned by  
3 Brown & Williamson; isn't that correct?

4           A     I don't know.

5           Q     Kool cigarettes are made by Brown &  
6 Williamson; correct?

7           A     Yes, sir.

8           Q     Do you know if the trademark to Kool is owned  
9 by Brown & Williamson?

10                   MR. McGAAN: Object; lacks  
11 foundation.

12                   You can answer.

13           A     I don't know.

14           Q     Do you know of any cigarette brands whose  
15 trademark is owned by Brown & Williamson?

16           A     I don't know the specific ownership of  
17 trademarks, no.

18           Q     If Philip Morris started making cigarettes and  
19 putting them in Kool packages, do you know if Brown &  
20 Williamson would try to take any action to stop them  
21 from doing that?

22                   MR. McGAAN: Object; calls for  
23 speculation.

24                   If you know, you can answer.

25           Q     You can answer, if you know.

- 1           A     I don't know.
- 2           Q     So apparently cigarettes, different brands can  
3 be manufactured at different facilities; correct?
- 4           A     Yes, sir.
- 5           Q     Who decides where the cigarettes are sourced?  
6 Who ultimately makes that decision?
- 7           A     That's kind of too broad of a question to  
8 answer, I think.
- 9           Q     I'll be happy to rephrase it. Where other  
10 than in America, if anywhere, are Kool cigarettes  
11 manufactured?
- 12          A     I don't know.
- 13          Q     Do you know if they are manufactured anywhere  
14 else?
- 15          A     I don't know.
- 16          Q     Are Kool cigarettes manufactured at only one  
17 facility in America?
- 18          A     We manufacture Kool cigarettes in Macon,  
19 Georgia.
- 20          Q     Is there any other facility in America where  
21 Kool cigarettes are manufactured?
- 22          A     No, sir.
- 23          Q     Are there any Brown & Williamson brands that  
24 are manufactured at more than one facility?
- 25                   MR. McGAAN: Object; vague.

1 THE WITNESS: You want me to  
2 answer?

3 MR. McGAAN: If you understand,  
4 yes, please. These objections are for  
5 the record, so unless I tell you not to  
6 answer, you just go right ahead.

7 A I believe our Winston-Salem facility where we  
8 make things like pipe tobacco also do some small hand  
9 packing of some of our products for special packages.

10 Q Let me back up. Maybe we missed each other.  
11 Probably my fault. You said you met with members of  
12 Kohnhorst's staff regarding sourcing of products;  
13 correct?

14 A Yes, sir.

15 Q And you told me sourcing of products involves  
16 deciding where the products are going to be made;  
17 correct?

18 A Yes, sir. Or doing the analysis to support  
19 it, I should say.

20 Q So doing the analysis to decide where  
21 something is going to be made?

22 A Yes. That's more appropriately what we meet  
23 on. We sat down and made the analysis of the issues.

24 Q Made the analysis of where certain products  
25 should be made?

1           A     Specific ad-hoc suggestions of sourcing  
2 relocation.

3           Q     When you say products, are you talking about  
4 cigarettes?

5           A     Yes, sir.

6           Q     Are you talking about brands of cigarettes?

7           A     Specific cigarette styles.

8           Q     Maybe that's where I'm missing you. When you  
9 say brands of cigarettes, I'm thinking Kool and Viceroy  
10 and all that type stuff. Is that what you are talking  
11 about?

12          A     No, sir. We are talking specific cigarette  
13 styles.

14          Q     What are some of the different cigarette  
15 styles?

16          A     As an example, in my terminology a Kool  
17 king-size is different than a Kool 100. So they may  
18 both carry the brand name Kool but they are two  
19 individual products.

20          Q     All right. So then my question is are Kool  
21 king-size made only at one facility?

22          A     I can't answer that, as I already said.

23          Q     When did you meet regarding the sourcing of  
24 products this year? You said it was this year?

25          A     Yes, sir. It was probably in July.

1 Q When you met, all the products were already  
2 being sourced at some facility, were they not?

3 A All the existing products were being sourced  
4 somewhere, yes, sir.

5 Q Were you-all just analyzing if those products  
6 should be sourced at those same places, should continue  
7 to be sourced at those places they were already being  
8 made?

9 A The specific products in question, we  
10 discussed whether we should continue to manufacture in  
11 that location or change locations.

12 Q Why would that be something that  
13 British-American Tobacco Holdings would be in on?

14 A Again, because different styles of cigarettes  
15 may require different pieces of equipment or processes  
16 to do. You may have to spend capital monies to  
17 manufacture them in a given location, so it would come  
18 back to the overall capital plan for the group. That  
19 would be one reason why you look at the sourcing issue.

20 Q Now, I want to continue on with the question  
21 are there any other meetings with representatives of BAT  
22 Group companies with whom you met since 1994?

23 A Since 1994, yes. That was all this year.

24 Q What were some of those meetings, the ones you  
25 recall? Before you answer that, let me ask you about



1 how many meetings were there.

2 A Numerous.

3 Q Closer to two or twenty?

4 A Twenty or more.

5 Q Twenty or more?

6 A Yes, sir.

7 Q Could you just give me briefly -- can you  
8 categorize them?

9 A When I worked for Mr. Kohnhorst in 1994 and  
10 prior to him assuming his current role as operations  
11 director, there was a Project BATTALION which looked at  
12 the organization of manufacturing operations groups on a  
13 global basis. Mr. Kohnhorst was what is called the  
14 drive team leader to sort out what are the most  
15 effective ways for British-American Tobacco Holdings to  
16 do these exact same things that we are talking about,  
17 sourcing capital and so forth. As part of that  
18 discussion, Mr. Kohnhorst used me to help organize, set  
19 up a lot of the meetings, generate issues. And when Mr.  
20 Kohnhorst moved to England, I went to England for six  
21 months and continued to work for him in the  
22 implementation of that. So I had numerous contacts with  
23 others in the BAT Group from, say, March, April of '95  
24 through June of '96.

25 Q Did you say April of '95?

1 A Yes, sir.

2 Q June of '96?

3 A Yes, sir.

4 Q And there you would meet with other BAT Group  
5 representatives?

6 A Yes, sir. I was stationed in Woking.

7 Q And what were you there to do for him?

8 A Well, as we tried to --

9 MR. McGAAN: I'm sorry. There  
10 may be some confusion. I'm sorry to  
11 interrupt. What dates were you in  
12 England?

13 THE WITNESS: I was in England  
14 from January of '96 to June of '96.

15 BY MR. HERRINGTON:

16 Q And during that time period, what were you  
17 doing in England?

18 A I worked for Mr. Kohnhorst to help in the  
19 implementation of these structures that would allow us  
20 now to do the comparison of the capital plans and  
21 sourcing decisions and these types of integrations  
22 across the group.

23 Q Would it be fair to say, then, that you were  
24 there to help integrate, coordinate, streamline,  
25 whatever verb you want to use in that vein, all the

1 tobacco operations for the BAT Group?

2 A Yes, we were trying to integrate the  
3 operations for BATCo., B&W, B.A.T Germany, Souza Cruz,  
4 into a coherent operations structure.

5 Q In order to do that, did you -- when I say  
6 you, I'm talking about you, Kohnhorst, or others who  
7 were helping you -- promulgate guidelines for the  
8 integration of these tobacco operations?

9 A I would have to have a definition of  
10 guidelines.

11 Q Well, I just mean in its most general sense,  
12 guidelines, directives, a policy manual.

13 MR. McGAAN: I object. I think  
14 it's vague and compound.

15 MR. HERRINGTON: I'll rephrase it.

16 BY MR. HERRINGTON:

17 Q What was the result of your work in England?

18 A That's fairly vague too.

19 Q Did you go over there and talk about things  
20 and say that would be pretty neat if we had a really  
21 integrated tobacco operation, and then you came back to  
22 America, or did you make some concrete decisions and  
23 implement those decisions?

24 A Yes. We didn't try to make some decisions and  
25 implement, but they were business process decisions as

1 opposed to guidelines.

2 Q Business process decisions?

3 A Yes.

4 Q Were these written?

5 A There is no such thing as a manual of how to  
6 do stuff.

7 Q How did Brown & Williamson know --

8 A I'm sorry. At the time I was there, there  
9 were no manuals written to say how to do things  
10 referring to this time period.

11 Q Well, was there one when you left?

12 A No. And this is why I'm having trouble with  
13 the question. As an example, we talked about the  
14 sourcing things. There is a process laid out that says  
15 if you are going to do a sourcing analysis, here is the  
16 things we want you to consider. It's kind of a  
17 checklist that says consider this, consider this,  
18 consider this, consider this. So that was eventually  
19 listed out as kind of a checklist of what one should  
20 consider when doing this. That exists today. I'm not  
21 even sure if it's in final form. It did not exist in  
22 1996.

23 Q We are getting somewhere. That's what I  
24 meant. So for lack of a better term, a sourcing  
25 checklist?

1           A     Yes.

2           Q     Things for consideration when you talked about  
3     sourcing?

4           A     Yes, sir.

5           Q     Brown & Williamson, when they consider  
6     sourcing, should look at this checklist and make sure  
7     they should consider the things on the checklist; is  
8     that correct?

9           A     Yes.

10          Q     Does the checklist serve as just a guide for  
11     Brown & Williamson?

12          A     It is a guide for Brown & Williamson, yes.

13          Q     Can Brown & Williamson choose to ignore the  
14     checklist?

15          A     Once again, I think if there was a decision  
16     that had to be made on the sourcing, as I said,  
17     hypothetically it would be the board's decision to make,  
18     if it was some obvious close call or obvious  
19     disagreement.

20          Q     When you say board, you are talking about  
21     B.A.T Holdings?

22          A     B.A.T Holdings, yes.

23          Q     Which is in England?

24          A     Which is in England.

25          Q     So if Nick Brooks said I don't want to make

1 Kool king-size in Macon, I want to make them somewhere  
2 else, and the board wanted him to make them in Macon,  
3 would the board win out and make that decision?

4 MR. McGAAN: Object; assumes  
5 facts not in evidence.

6 A I don't know the answer to that.

7 Q Going back to that meeting regarding sourcing  
8 of products, you remember the discussion we had about  
9 that a few minutes ago?

10 A Yes, sir.

11 Q And one of the products, specific products you  
12 were talking about was Kool king-size?

13 A I don't believe I said that, sir.

14 Q What was a specific product you-all were  
15 talking about at that meeting, just one product?

16 A Viceroy king-size box that we shipped to  
17 Lebanon.

18 Q Viceroy king-size box that you ship to  
19 Lebanon?

20 A Yes, sir.

21 Q At the time of that meeting, where were  
22 Viceroy king-size boxes that were going to be shipped to  
23 Lebanon being made?

24 A Macon.

25 Q Do you know if Viceroy is a Brown & Williamson

1 brand cigarette?

2 MR. McGAAN: Object; vague.

3 A As I said before, I don't know the specific

4 trademark ownership situations.

5 Q Macon is a Brown & Williamson facility;

6 correct?

7 A Yes, sir.

8 Q Where are Viceroy cigarettes made?

9 MR. McGAAN: Object; vague.

10 Q The actual cigarette itself. I'm asking do

11 you know where the Viceroy cigarette is made.

12 MR. McGAAN: Same objection.

13 If you want me to explain why I'm

14 objecting, I will.

15 A I need to know specifically which Viceroy

16 product, as we discussed earlier.

17 Q Viceroy king-size, would that help you?

18 A No, sir. It has to be by market.

19 Q At the meeting with Kohnhorst's staff

20 regarding the Viceroy king-size box that goes to

21 Lebanon, at the time of that meeting, those were being

22 made in Macon; correct?

23 A Yes, sir. I'm sorry. It's Viceroy king-size

24 soft cup, not box. I apologize.

25 Q At that meeting did you-all decide that Macon

1 would continue to make Viceroy king-size soft cup?

2 A Yes, sir, for Lebanon.

3 Q For Lebanon?

4 A Yes, sir.

5 Q And you were there in your capacity as the  
6 operations planning manager for Brown & Williamson?

7 A Yes, sir.

8 Q Is there any other facility in America that  
9 can manufacture the Viceroy king-size soft cup, that has  
10 the capability?

11 MR. McGAAN: Object; vague.

12 A There is no other Brown & Williamson  
13 facilities.

14 Q That's what I'm asking.

15 A There is no other Brown & Williamson  
16 facilities.

17 Q What were you-all's choices when you-all were  
18 deciding whether this soft cup would continue to be  
19 manufactured in Macon? What other facilities did you  
20 have to choose from?

21 A Other British-American Tobacco Holdings  
22 facilities.

23 Q Like maybe some in Europe?

24 A Like we considered some in Europe.

25 Q Okay. Was there any disagreement at that



1 meeting as to where any specific product would be  
2 sourced?

3 A No, sir. We went through our guidelines and  
4 our checklist, and the answers from the cost analysis  
5 were obvious. There was a consensus, not disagreements.

6 Q You just used the word "guidelines." What do  
7 you mean?

8 A The guidelines as we referred to earlier, the  
9 checklist that I said we had as a guideline for doing  
10 sourcing.

11 Q Now, your present position is not under R&D at  
12 Brown & Williamson, is it?

13 A No, sir.

14 Q The positions you named that you previously  
15 held at Brown & Williamson, some of those were in R&D;  
16 correct?

17 A Yes, sir.

18 Q Could you just briefly, or best of your  
19 ability, tell me how the R&D department at Brown &  
20 Williamson is set up? And what I mean by that, are  
21 there individual departments within R&D, and, if so,  
22 what are they, that type thing.

23 A Yes, sir. Best of my knowledge, within R&D  
24 currently there are various subdepartments such as  
25 product development, such as leaf blending, such as

1 process development, such as routine analytical  
2 analysis, such as analytical research. I think there is  
3 a department called scientific and regulatory affairs.  
4 That's to the best of my recollection.

5 Q And these are all different departments within  
6 the R&D department?

7 A Yes, sir.

8 Q What's the difference between routine  
9 analytical analysis and analytical research?

10 A Routine analytical, to my understanding, does  
11 the repetitive, highly automated testing of products and  
12 samples. Analytical research would do specialized  
13 analyses and new methods development where appropriate.

14 Q You say specialized analyses and what?

15 A New methods.

16 Q So would it be fair to say that routine  
17 analytical analysis, one of their things is just to make  
18 sure that the cigarettes are up to standards?

19 A Using my words, they do part of the testing of  
20 our products to see if they are up to standards.

21 Q But they wouldn't do like testing out some new  
22 ingredient or something like that; is that correct?

23 A You are going to get beyond my knowledge of  
24 R&D here very quickly, the details of R&D, I mean. If I  
25 could use an example, they would do things like routine

1 machine smoking of our products.

2 Q And analytical research does specialized  
3 analysis and new methods. What do you mean when you say  
4 new methods?

5 A Again, I'm going to my understanding.

6 Q Every question I ask you is to the best of  
7 your understanding.

8 A Best of my understanding, if you had a new  
9 method or you wanted to test for something new that you  
10 never tested before and you wanted to develop an  
11 automatic method or more routine method, then you have  
12 to develop an improved methodology for doing that. If  
13 you wanted a method that was more precise than, say, an  
14 old method, okay -- it's kind of like your computer.  
15 You get more powerful as you go through time. We have  
16 to develop that methodology somewhere.

17 Q Would testing the pharmacological effects of  
18 smoking constituent, would that be done in analytical  
19 research or any one of these other departments?

20 A I don't know.

21 MR. MCGAAN: Late objection;  
22 lacks foundation; assumes facts not in  
23 evidence.

24 BY MR. HERRINGTON:

25 Q You said you don't know?

1           A     I don't know.

2           Q     Do you know who within Brown & Williamson  
3 determines what testing is to be done?

4           A     It's too vague for me, sir.

5           Q     Who determines what tests are going to be done  
6 in the routine analytical analysis division? You said  
7 they test samples; right?

8           A     That's still too vague for me.

9           Q     Someone told them to test or they wouldn't  
10 just go in there and test, I wouldn't assume, so I'm  
11 wondering --

12          A     I'm not trying to be evasive. I'm trying to  
13 understand what the question is, and it's a little bit  
14 vague. If we were making a commercial product that we  
15 ship every day, we have guidelines, for example, as  
16 prescribed by the FTC. We have to declare tar and  
17 nicotine in our advertisement; hence, we have to do some  
18 monitoring of that product. So we know now we have to  
19 measure tar and nicotine. That would be a specified, if  
20 you will, because the FTC says so. Then there are  
21 people who determine -- and I'm not sure where they are  
22 located in R&D -- how many samples one would have to  
23 smoke to make sure you have a statistically valid test,  
24 and you give them samples to test those.

25          Q     And what do you mean when you say specialized

1 analysis? We were talking in the context of the  
2 analytical research department.

3 A Well, it could be, as an example -- can I  
4 answer this with an example, because it's fairly vague?

5 Q Fine with me.

6 A As an example, you may recall a couple years  
7 ago Philip Morris recalled a whole bunch of products.  
8 They found some bad plasticizers in their products.  
9 When that hit the press, obviously we buy from the same  
10 suppliers of plasticizers, so we wanted to make sure  
11 none of our products had that same compound that they  
12 found in theirs, and I can't recall what it is. But  
13 that's not something that you do routinely, so we went  
14 to the special guys and said can you check for this.

15 Q Did you say plasticizer?

16 A Yes, sir.

17 Q Could you spell that, please?

18 A P-L-A-S --

19 MR. McGAAN: It's plastic with  
20 I-Z-E-R. I got to break in like two  
21 minutes for this call.

22 MR. HERRINGTON: You want to  
23 break now?

24 MR. McGAAN: If it's convenient  
25 for you.

1 (Brief recess)

2 BY MR. HERRINGTON:

3 Q Let me go back. There was a time, as we  
4 talked about, that you were actually in the R&D  
5 department; correct?

6 A Yes, sir.

7 Q In 1991 you moved back to the R&D group as the  
8 manager of reconstituted tobacco development. That's  
9 correct; right?

10 A Yes, sir.

11 Q Rather than me just go through my notes, why  
12 don't you tell me which positions you held within B&W  
13 that were within the R&D department.

14 A As I think I've already said, I was in the  
15 process development area in R&D from joining the company  
16 in 1973 up until the early to mid '80s. Then I was the  
17 planning manager from that point in time until 1990.  
18 Then in 1991, I was head of the reconstituted tobacco  
19 group until 1994.

20 Q So those three positions were within the R&D  
21 department?

22 A Yes, sir.

23 Q Of Brown & Williamson?

24 A Yes, sir.

25 Q Now, we've talked about a couple of plans

1 within departments. We've talked about the disaster  
2 recovery plan, the capital expenditure plan. Was there  
3 one overall plan for the R&D department?

4 A I believe R&D -- I believe R&D generates a  
5 plan.

6 Q Now, R&D generates a plan. Is it an annual  
7 plan?

8 A Yes, sir. I mean, if they generate a specific  
9 document, yes, sir, it would be an annual plan.

10 Q Do they generate a specific -- if they  
11 generate a specific document, what does that mean?

12 A I don't know if they generate a specific plan  
13 document per se.

14 Q Okay. And in that plan, what would be in that  
15 plan?

16 MR. McGAAN: Calls for  
17 speculation.

18 Q If you know. Do you know what types of things  
19 would be in an R&D plan?

20 MR. McGAAN: Same objection.

21 Q Let me ask you this: From 1973 until 1994,  
22 you were in the R&D department of Brown & Williamson;  
23 correct?

24 A No, sir.

25 Q Up until what time? 1991?

1           A     Up until 1990, I was in the R&D department;  
2     and beginning again in 1991 to 1994, I was in the R&D  
3     department.

4           Q     I thought you told me when you started in '73  
5     to early to mid '80s was in process development?

6           A     Yes, which was in R&D. I was the planning  
7     manager in R&D from early to mid '80s until 1990. I  
8     left R&D in 1990 and came back to R&D in '91 until 1994.

9           Q     From '73 until '90 and from '91 to '94, you  
10    were in R&D; correct?

11          A     Yes, sir.

12          Q     During those times, are you aware of any R&D  
13    plan?

14          A     Yes, sir.

15          Q     Was it a written document?

16          A     Yes, sir.

17          Q     Did you ever see the document?

18          A     Yes, sir.

19          Q     I'm asking what types of things are included  
20    in an R&D plan.

21          A     I can answer to that time period. I thought  
22    you were asking me earlier for currently.

23          Q     No, sir. The type things while you were  
24    there. And we can narrow it down to a particular year,  
25    if it helps you.



1           A     It would have been plans, for example, which  
2 products we were going to improve the sensory taste and  
3 flavor of. It would have been which processes we would  
4 be developing. It would be which methods and so forth  
5 we were going to automate and which research or  
6 packaging or other things we might work on.

7           Q     Research what now?

8           A     Research or packaging.

9           Q     And these plans would be determined on an  
10 annual basis, did you say?

11          A     When you reviewed your plan, yes, sir, every  
12 year.

13          Q     Would there be some years when you'd review it  
14 and say, well, that's still a good plan, we are going to  
15 do that this year too?

16          A     I think that would refer more to the specific  
17 programs and projects that might go on, yes, sir.

18          Q     Okay. From 1973 until the mid '80s when you  
19 left, who would get together to formulate the plan?

20          A     1973 through the early '80s, I was in the  
21 process development department, so my plan would have  
22 been -- I would not have generated an R&D plan then. I  
23 would have developed plans for the projects I was  
24 working on.

25          Q     Is there not an overall R&D plan, though? I

1 thought that's what we were talking about.

2 A Yes, sir. I was correcting the dates. I was  
3 only responsible for the overall plan between mid '80s  
4 and 1990.

5 Q But my question is from 1973 until the early  
6 to mid '80s, who, if you know, formulated the overall  
7 R&D plan.

8 A I don't know.

9 Q From the mid '80s until 1990, you assisted in  
10 developing the overall R&D plan; is that correct?

11 A Yes, sir. I was the person who got the  
12 specific program plans from the individual departments  
13 and tried to formulate that into a coherent document.

14 Q Is that how the overall R&D plan is  
15 formulated? You take plans from individual R&D  
16 departments and try to formulate them into an R&D plan?

17 A Yes, sir. That was my role when doing it.

18 Q When you were doing it, did you have the  
19 ultimate say on whether a particular plan would be  
20 incorporated into the overall plan?

21 A No, sir.

22 Q Who had that authority?

23 A It would have been the head of Brown &  
24 Williamson, I would presume.

25 Q So the R&D plan would be submitted to the head

1 of Brown & Williamson?

2 A Yes, sir.

3 Q And then do you know if that's where the buck  
4 stops, so to speak? Did the CEO or head of Brown &  
5 Williamson then approve or disapprove, or do you know if  
6 he had to --

7 A No. He would generally approve the plan.

8 Q So you don't think that anybody other than the  
9 head of Brown & Williamson -- let me rephrase that. Do  
10 you know if the head of Brown & Williamson would  
11 transmit the plan to any of the parent companies of  
12 Brown & Williamson?

13 A I don't know that.

14 Q You don't know?

15 A I don't know.

16 Q So it's totally possible that he did that; you  
17 just don't know?

18 A I don't know.

19 Q You told me several different departments  
20 within R&D, product development, leaf blending, process  
21 development. Those are presently in existence; is that  
22 correct?

23 A To the best of my knowledge, as I said  
24 earlier, yes, that's their structure.

25 Q To the best of your knowledge, were those

1 departments in existence from 1973 until the early to  
2 mid '80s?

3 A I don't know.

4 Q Were there any departments in existence from  
5 1973 until the mid '80s that are not in existence today  
6 in the R&D department?

7 A I don't know, or I don't recall.

8 Q Are there any in existence today that you know  
9 were not in existence from 1973 to mid '80s?

10 A Again, I don't know.

11 Q And you said the way the overall R&D plan is  
12 formulated is each department will come up with a plan  
13 for its division and the person in charge of formulating  
14 the plan will try to coordinate that into a uniform  
15 plan; correct? Is that a fair statement?

16 A They take those individual inputs and try to  
17 integrate them into one plan document.

18 Q Now, all that time we were talking about from  
19 1973 until the mid '80s?

20 A No, sir. I said I didn't know that for that  
21 time period.

22 Q You don't know how the overall plan was  
23 formulated from 1973 to the mid '80s?

24 A Yes, sir, that's what I said before.

25 Q So you were just talking about from '91 to

1 '94?

2 A No, sir.

3 Q I'm sorry. I've gotten confused here, then.

4 All that we just talked about as far as how the overall  
5 plan is formulated, when was that applicable?

6 A From mid '80s to 1990.

7 Q Mid '80s to 1990, okay. So you are not aware  
8 of how the overall plan was formulated from 1973 until  
9 the mid '80s?

10 A No, sir. That wasn't my area of  
11 responsibility.

12 Q And from '90 until '94, you weren't aware of  
13 how the overall R&D plan was formulated; is that  
14 correct?

15 A From '91 to '94?

16 Q '90 to '94.

17 A When I was in R&D 1991 to 1994, there was also  
18 an R&D plan manager. It was not me. I presume he took  
19 my plan for the recon group and put that into an overall  
20 plan.

21 Q You have no reason to believe the process  
22 changed from the time you were doing it to the time --

23 A I can't answer the specifics.

24 Q I'm just asking you don't have any reason to  
25 believe it changed, do you?

1           A     I just don't know, so I can't speculate on  
2     that.

3           Q     From the mid '80s to 1990 when you worked on  
4     the plan, you had responsibility for the plan, would you  
5     have communications with representatives from other BAT  
6     Group companies regarding your plan?

7           A     Yes, sir.

8           Q     And what would those communications be?

9           A     We tried at one point in there to develop a  
10    data base of projects across the various, across BATCo.  
11    and Souza Cruz, Brown & Williamson, and BATCF, BAT  
12    Germany. So we had several meetings where we tried to  
13    come up with a computerized way of putting projects onto  
14    that data base. So I met with representatives from  
15    BATCo. and Souza Cruz and Germany and myself to talk  
16    about how we could formulate that project data base.

17          Q     Other than to formulate a project data base,  
18    did you cooperate in any other way to make sure you  
19    weren't having overlap, for example?

20          A     Well, we would have on selected topics, there  
21    might be specialists meetings, and I might have sat in a  
22    session or two during that period of time. It's pretty  
23    far back to remember specific meetings.

24          Q     Were there ever any problems -- other than to  
25    come up with this data base, did you meet, if just for

1 informational purposes, just to know what Souza Cruz was  
2 researching, for example?

3 A I don't recall personally attending any  
4 meetings like that.

5 Q I think you may have just answered this, but  
6 were there any devices in place to make sure that Brown  
7 & Williamson wasn't spending money on research that  
8 Souza Cruz was doing research on?

9 A From my personal standpoint, that data base  
10 was to attempt to do that so that you would have some  
11 understanding of what Souza Cruz was working on, for  
12 example.

13 Q Did you have meetings in which -- let me ask  
14 you this: Did you ever establish a data base?

15 A We tried, but I don't think it ever became a  
16 successful entity.

17 Q And why is that?

18 A Cumbersomeness of it.

19 Q What do you mean by cumbersome?

20 A Well, the point would be to have access via  
21 electronic media; but if you go back to 1989, '90,  
22 again, the technology base, if you will, for that type  
23 of stuff just wasn't there, and it became cumbersome to  
24 try to access via the models and so forth where the  
25 projects were.

1           Q     Why couldn't you-all just exchange your R&D  
2 plans for that year and say this is what we are doing  
3 here at Brown & Williamson, and that way Souza Cruz  
4 would know not to do any of that stuff? Why would that  
5 not work?

6                     MR. McGAAN: Object; assumes  
7 facts not in evidence.

8           A     It seems like that we did get in an annual  
9 thing of just a list of programs from, for example,  
10 Southampton. I can't recall if we got it in from other  
11 centers or not.

12          Q     Do you recall there ever being an instance  
13 where at one of these meetings you realized you were  
14 doing duplicative research?

15          A     I can't recall any specifics, no.

16          Q     Was there a procedure in place if you were  
17 doing that that it could be -- strike that.

18                     I'm trying to figure out how you coordinated  
19 amongst one another to make sure Brown & Williamson was  
20 doing its testing and Souza Cruz was doing its testing  
21 and the two weren't wasting time doing the exact same  
22 research. How was that avoided?

23          A     As I said, that was the intent of trying to  
24 get all these projects onto the data base. So up to  
25 that point, arguably you could say there was



1 insufficient coordination amongst the groups to assure  
2 that there were no duplicating efforts.

3 Q It's entirely possible to this day Brown &  
4 Williamson and Souza Cruz may be duplicating research?

5 A That's pretty speculative for me to answer  
6 that.

7 Q I'm just asking is it possible.

8 A I don't know.

9 Q If your data base weren't successful and that  
10 were the type thing it was meant to avoid, would it not  
11 be possible that that could be happening?

12 MR. McGAAN: Object; calls for  
13 speculation; assumes facts not in  
14 evidence.

15 A I don't know.

16 Q Other than these meetings that we've just been  
17 talking about, were there any other coordination efforts  
18 within the BAT Group companies to coordinate research  
19 and development?

20 A Nothing that I was involved in.

21 Q But are you aware of any other efforts?

22 A Yes, sir. I mean, the heads of R&D may have  
23 gotten together and talked about it.

24 Q The heads of R&D might have gotten together?

25 A Yes, sir.

1           Q     Did they get together at a conference or just  
2 a meeting or what?

3           A     They would meet annually to talk about it.

4           Q     The heads of R&D would meet annually to  
5 discuss their R&D plans?

6           A     Yes, sir.

7           Q     When you were in charge of the plan, were you  
8 actually the head of R&D?

9           A     No, sir.

10          Q     So when you were having your meetings, were  
11 you meeting with people who were the equivalent position  
12 in other companies?

13          A     Yes, sir.

14          Q     BAT Group companies. So in addition to your  
15 meetings, the heads of the R&D for each company were  
16 also meeting annually; is that correct?

17          A     Yes, sir. Best of my knowledge, yes, sir.

18          Q     Do you know of any other efforts within the  
19 BAT Group to coordinate research and development?

20          A     I'm certain there were meetings on selected  
21 topics.

22          Q     Are you aware of any of these meetings where  
23 it was decided that a particular area would be  
24 researched and then responsibility was given to do that  
25 research?

1           A     That's so broad that I couldn't answer that.

2           Q     Are you aware of B.A.T Industries dictating  
3     that a particular test be done, any test be done? Are  
4     you aware of B.A.T Industries ever telling Brown &  
5     Williamson research and development department to do any  
6     particular test?

7                     MR. McGAAN: Object; lacks  
8     foundation.

9           A     No, sir, I'm not.

10          Q     Are you familiar with Project AIRBUS?

11          A     Yes, sir.

12          Q     Could you tell me what that is, please?

13          A     It was a project whose objective was to have a  
14     commercial response to RJR's Premier product.

15          Q     What was your understanding of what RJR's  
16     Premier was?

17          A     It was a cigarette that they marketed that  
18     heated but did not burn tobacco.

19          Q     What's the advantage of heating tobacco as  
20     opposed to burning it?

21          A     I believe the way Premier worked was it  
22     produced a flavored aerosol that was different than the  
23     aerosol you would get off a conventional type of  
24     cigarette.

25          Q     Does that mean that heating just causes better

1    aroma from the smoke than burning?

2           A     Well, the aerosol that is delivered is  
3    different than the aerosol that comes out of a  
4    conventional cigarette.

5           Q     That's what I'm asking. How is it different?

6           A     It's basically simpler in its chemical makeup.  
7    The tar and condensate would be different.

8           Q     How would it be different?

9           A     I'm not a smoke chemist.

10          Q     I understand your answer. To the best of your  
11    ability.

12          A     Best of my ability, it was a lot less complex,  
13    had a lot less chemicals. There is a lot of chemicals  
14    in smoke.

15          Q     Do you know who directed Project AIRBUS to be  
16    done?

17          A     Specifically, no, sir.

18          Q     Do you know from what BAT Group company it  
19    emanated?

20                   MR. McGAAN: Lacks foundation.

21          A     I can tell you that we worked on AIRBUS at  
22    Brown & Williamson. I know that.

23          Q     But you don't know who directed that AIRBUS  
24    was a project that Brown & Williamson was going to do?

25          A     Not specifically, no, sir.

1           Q     So you never had a conversation with anybody  
2     at Brown & Williamson in which it was discussed that  
3     BATCo. wants this Project AIRBUS done and we've got to  
4     help out, or any other BAT Group company wants Project  
5     AIRBUS done and we are helping out?

6           A     I think I'd have to say that we saw the  
7     product by RJR Reynolds as being a commercial threat,  
8     and we discussed it within R&D and proposed to Brown &  
9     Williamson management that we need to pursue this  
10    because it's a commercial threat to us.

11          Q     So do you think Project AIRBUS, then, was that  
12    a Brown & Williamson idea?

13          A     To the best of my knowledge, yes.

14          Q     Was there anybody in charge of AIRBUS?

15          A     Yes, sir. There was a project manager  
16    assigned to AIRBUS.

17          Q     And who was that?

18          A     I don't recall.

19          Q     Was he a Brown & Williamson employee?

20          A     Yes.

21          Q     And when I say in charge of it, are you  
22    talking about he was in charge of it for Brown &  
23    Williamson or he was overall in charge of Project  
24    AIRBUS?

25          A     All I can speak to is he was in charge of

1 AIRBUS Brown & Williamson.

2 Q So you don't know if maybe there was somebody  
3 at BATCo. who was really in charge of AIRBUS?

4 MR. McGAAN: Object;  
5 mischaracterizes his testimony.

6 Q Do you know if anybody at BATCo. worked on  
7 AIRBUS?

8 A No, I don't know that.

9 Q Do you know of anybody at any other BAT Group  
10 company that worked on AIRBUS?

11 A During the period that Brown & Williamson  
12 worked on AIRBUS, I do not know the specifics of that  
13 project to know if there was any input, assistance, or  
14 anything else from anyone in the BAT Group or not. I  
15 just don't know the specifics of the project well enough  
16 to answer that.

17 Q Have you ever heard of Project GREENDOT?

18 A Yes, sir.

19 Q Could you tell me what that is, please?

20 A To the best of my understanding, again,  
21 because I believe Project GREENDOT was executed at the  
22 Southampton R&D center, its objective was to find a  
23 similar commercial response to Premier that had other  
24 aspects of the smoking experience, if you will, that  
25 Premier did not.

1           Q     What do you mean by other aspects of the  
2 smoking experience?

3           A     Well, Premier didn't burn down. It had a big  
4 charcoal thing on the end of it, stayed the same shape  
5 and size. There were some who believe that a cigarette  
6 should, in fact, burn down, you should flip ash, you  
7 should light it without having to use a special lighter  
8 for it like Premier had to have. So the theory was for  
9 GREENDOT we would like to have a product that does those  
10 things yet produces a much simpler smoke than  
11 conventional cigarettes and more along the lines of  
12 Premier.

13          Q     So was the only difference between GREENDOT  
14 and AIRBUS that GREENDOT had the further objective of  
15 coming up with a product that has the same attributes as  
16 other cigarette products, like burning down to the end,  
17 like lighting them with a lighter, that type thing?

18          A     To my knowledge, I think that's right.

19          Q     Do you know whatever happened with Project  
20 AIRBUS?

21          A     Commercially the Premier product did not do  
22 well. It was eventually withdrawn from the market by  
23 R.J. Reynolds. And we had research going on proceeding  
24 on the AIRBUS, and I believe eventually that research  
25 was taken over by Southampton to pursue.

1 Q So AIRBUS was eventually taken over by  
2 Southampton?

3 A I believe so.

4 Q Do you know who made the decision for  
5 Southampton to take over AIRBUS?

6 A No, sir, I don't know specifically who made  
7 the decision.

8 Q How did you learn that AIRBUS had been taken  
9 over by Southampton?

10 A I believe my immediate boss told me.

11 Q Who was that?

12 A Jeff Wigand at the time.

13 Q But you don't know who -- when AIRBUS was  
14 being worked on at Brown & Williamson, you don't know  
15 who was in charge of it for Brown & Williamson?

16 A The specific project manager, no, sir, I don't  
17 recall him.

18 Q Did GREENDOT, was it eventually terminated?

19 A I have no knowledge of that.

20 Q Do you know if RJR marketed its Premier as a,  
21 quote/unquote, safer cigarette?

22 A I don't believe they did, sir.

23 Q And do you know what Project RIO is?

24 A No, sir.

25 Q Never heard of Project RIO?



- 1           A     Only in the press and media recently.
- 2           Q     Do you have an understanding of what Project  
3   RIO is?
- 4           A     No, sir.
- 5           Q     No idea?
- 6           A     No, sir.
- 7           Q     Did people at Brown & Williamson, employees,  
8   do any work on Project GREENDOT that you know of?
- 9           A     I don't recall the specifics.
- 10          Q     Do you know, have you ever heard of Y1  
11   tobacco?
- 12          A     Yes, sir.
- 13          Q     Could you tell me what that is, please?
- 14          A     It's a type of flue-cured tobacco.
- 15          Q     How many major types of tobacco are there?
- 16          A     I couldn't answer that specifically, sir.
- 17          Q     How about do you know how many major types of  
18   tobacco there are grown in the United States?
- 19          A     There is at least flue-cured tobacco and  
20   burley tobacco companies.
- 21          Q     Flue-cured and burley?
- 22          A     I'd say those are the major types.
- 23          Q     What are the major differences between  
24   flue-cured and burley?
- 25          A     Where they are growing, where they are grown,

- 1 how they are harvested, how they are cured.
- 2 Q Where is burley mainly grown?
- 3 A Burley is mainly grown in Kentucky.
- 4 Q What about flue-cured?
- 5 A Virginia and North Carolina are the two major
- 6 states.
- 7 Q And where is Y1 grown?
- 8 A I believe that was grown in Brazil.
- 9 Q Is Brazil a big producer of flue-cured
- 10 tobacco?
- 11 A Yes, sir.
- 12 Q You say Y1 is a type of flue-cured tobacco.
- 13 Does Y1, did it occur naturally or was it a type of
- 14 product that was developed?
- 15 A Well, all strains of tobacco are eventually
- 16 developed.
- 17 Q How was Y1 developed; do you know?
- 18 A I don't know the specifics of it.
- 19 Q Have you ever heard of a company called DNAP?
- 20 A Yes, sir.
- 21 Q Could you tell me who DNAP is or what DNAP is?
- 22 A They were a consultant that we used for, I
- 23 believe, development of a cross-breeding plant.
- 24 Q Are you familiar with DNAP in relation to Y1?
- 25 A I know they worked with us on Y1.

1           Q     Was Y1 ever grown and cultivated in the United  
2 States?

3           A     I have no idea.

4           Q     Do you know how Y1 came to be grown in Brazil?

5           A     I have no idea, sir.

6           Q     Have you ever heard of Phil Fisher smuggling  
7 seeds out in the bottom of a box of cigarettes to  
8 Brazil?

9                     MR. McGAAN: Object;  
10           argumentative.

11                    You can answer.

12          A     No.

13          Q     You never heard of that knowledge?

14          A     (Witness shook his head negatively.)

15          Q     Do you know who directed the development of Y1  
16 tobacco for Brown & Williamson?

17          A     I'm sorry. What do you mean by direct?

18          Q     Do you know if anyone at Brown & Williamson  
19 had oversight responsibilities for the development of Y1  
20 tobacco?

21          A     It would have been Phil Fisher.

22          Q     What is another type of flue-cured tobacco?  
23 Can you just name one?

24          A     There are several different grades of  
25 flue-cured tobacco.

1 Q What grade is Y1?

2 A I can't answer that specifically. I'm not a  
3 leaf blender, but I know there are several different  
4 grades of flue-cured tobacco. There are different types  
5 of varieties of flue-cured tobacco. They grow different  
6 tobaccos in Georgia, for example, than they do in North  
7 Carolina.

8 Q Do you know whether Y1 tobacco has a higher  
9 nicotine level than other flue-cured tobaccos?

10 A I can't say that Y1 has a higher nicotine  
11 content than all flue-cured tobaccos possible.

12 Q Do you know whether it has a higher nicotine  
13 level than most flue-cured tobaccos?

14 A I can say it has a higher nicotine content  
15 than some flue-cured tobaccos.

16 Q But you don't know on which side of the 50  
17 percent it would fall?

18 A No, sir.

19 Q Other than Phil Fisher and some unnamed  
20 employees at DNAP, do you know who else worked on the  
21 development of Y1 tobacco?

22 A No, sir, I don't recall that.

23 Q Do you know anyone who worked on Project  
24 AIRBUS from Brown & Williamson?

25 A I don't recall any specific people who worked

1 on it.

2 Q Did you say whether you had worked on it or  
3 not?

4 A I did not work on it as part of the project.  
5 I was part of the challenge as to whether it is a  
6 commercial threat or not, the analysis of what Reynolds  
7 was doing.

8 Q Would it be fair to say that your role would  
9 have just been, by the very nature of your position at  
10 the time, to just facilitate the process?

11 A Yes, sir.

12 Q Are you familiar with a term called "ammonia  
13 treatment"?

14 A That's a little bit vague for me, sir.

15 Q Are you aware of whether or not ammonia is  
16 used in the cigarette manufacturing process?

17 A Yes, sir.

18 Q Can you tell me, if you know, what  
19 significance, if any, ammonia plays in the manufacturing  
20 process?

21 A We use ammonia in the manufacture of our  
22 reconstituted tobacco. Its key role there is to improve  
23 the taste of the reconstituted tobacco.

24 Q I'm sorry. Can you tell me again exactly what  
25 reconstituted tobacco is?

1           A     Reconstituted tobacco is a component of  
2     cigarettes made from tobacco dust, tobacco vines, and  
3     stems that turns that into a useful form that can be  
4     used in cigarettes.

5           Q     And it's at that stage, the reconstituted  
6     tobacco stage, that you use ammonia?

7           A     Yes, sir.

8           Q     And you say it's merely for taste enhancement?

9           A     Its primary role is taste enhancement.

10          Q     Do you have any understanding of whether  
11     ammonia interacts with nicotine in the manufacturing  
12     process?

13          A     Interacts is a fairly vague term.

14          Q     Okay. I'll be more specific. Nicotine and  
15     tobacco is in solid form, is it not?

16          A     I don't know. I presume so, but I don't know.

17          Q     What about a salt form? Have you ever heard  
18     that term?

19          A     I've heard these terms, but I'm not a chemist.

20          Q     I understand that. And obviously nor am I.

21                     MR. McGAAN: Me either.

22          Q     Have you ever heard of free nicotine?

23          A     I've heard the terminology, yes, sir.

24          Q     Are you aware whether ammonia changes the  
25     bound form of nicotine into the free form of nicotine?

1           A     I'm not aware of that. I mean, I've heard  
2     that espoused or I've heard ammonia could affect pH and  
3     could do that, but I'm just not familiar with the  
4     details of that.

5           Q     Do you know whether free nicotine is more  
6     readily absorbed into the smoker than bound nicotine?

7           A     I have no knowledge of that.

8           Q     What about pH? What do you know about pH as  
9     it relates to interaction with nicotine?

10                   MR. McGAAN: Object. That's  
11     vague.

12                   Answer, if you know.

13           A     As I said, I don't know the, I mean, pH  
14     change, the acidity or basicity of tobacco, what effect  
15     that has on nicotine.

16           Q     You don't know?

17           A     I'm not familiar with that kind of chemistry.

18                   MR. HERRINGTON: Can we go off  
19     the record a second?

20                   (Off-the-record discussion.)

21                   (Lunch recess.)

22                   (Deposition Exhibit Gordon 1 was marked.)

23     BY MR. HERRINGTON:

24           Q     Mr. Gordon, you've been handed what's been  
25     labeled Gordon Deposition Exhibit 1. Could you please

1 take a look at the first page there. I believe this is  
2 a document entitled, or at least it has up at the top,  
3 Brown & Williamson Tobacco Corporation, Product  
4 Development. Do you see that?

5 A Yes, sir.

6 Q And under that it says, Restricted  
7 R&D-B015-88"; correct?

8 A Yes, sir.

9 Q And it says, "The Secret of Marlboro, D.L.  
10 Gordon"?

11 A Yes, sir.

12 Q Is that you, D.L. Gordon?

13 A Yes, sir.

14 Q Would this be a report or presentation that  
15 you made April 28th, 1988?

16 A This is a --

17 Q Feel free to look through that.

18 A This is a report dated April 28, 1988.

19 Q Entitled The Secret of Marlboro?

20 A Yes, sir.

21 Q Do you recall compiling this report?

22 A Yes, sir.

23 Q Would you take a look at that first page, this  
24 distribution list.

25 A Yes.



1           Q     Could you tell me from what companies each of  
2 these distributees are?

3           A     I believe Mr. Heard was BATCo; I believe Mr.  
4 Binns was BATCo.; Mr. de Sequeira was Souza Cruz; Mr.  
5 Rittershaus and Mr. Kausch were BATCF; Mr. Wilson, Mr.  
6 McGregor were, I believe, Australia, Wills Australia,  
7 which is part of BATCo.; Mr. Dunn was Imperial of  
8 Canada, Limited; and all the other people from Mr. Riehl  
9 to the end of the distribution list were Brown &  
10 Williamson.

11          Q     Everyone after Reynolds? Is that what you  
12 said?

13          A     No. Riehl on were Brown & Williamson.

14          Q     All of the Brown & Williamson employees that  
15 you named, do you know whether they are still with Brown  
16 & Williamson?

17          A     Mr. Riehl is, J.N. Jewell is, A. McMurtrie is;  
18 J.H. Lauterbach is; and myself.

19          Q     And what is Riehl's title now?

20          A     Vice-president of R&D.

21          Q     We've already talked about Jewell. What is  
22 Mr. McMurtrie?

23          A     Director of product development.

24          Q     And that's in the R&D department?

25          A     Yes, sir.

1 Q And what does Lauterbach do?  
2 A I don't know the specific title. He is in  
3 R&D.  
4 Q Do you know where M.L. Reynolds is today?  
5 A No, sir.  
6 Q What about J.G. Esterle?  
7 A No, sir.  
8 Q What about Fisher?  
9 A No, sir.  
10 Q What about Woertz?  
11 A Mr. Woertz is deceased.  
12 Q What about Nall?  
13 A He is retired from B&W, and, I believe, lives  
14 outside of Louisville, Kentucky.  
15 Q Retired and what? I'm sorry?  
16 A He's retired and lives outside of  
17 [DELETED]  
18 Q You mean like he lives in the suburbs or he  
19 lives way out? We are way out of [DELETED] and that's  
20 why I'm trying to make sure.  
21 A He lives in a golf community that's like 50  
22 miles south of [DELETED] or something.  
23 Q What about Mr. Cole?  
24 A No, sir, I do not.  
25 Q Don't know where he is?

1           A     No, sir.

2           Q     Would you turn to what's at the very top of  
3 the page. It says page one. Please look at the fourth  
4 paragraph which begins, "Based upon our review." Do you  
5 see that? This is you talking, is it not, or you  
6 reporting this; is that correct?

7           A     As noted on page two, sir, in the  
8 acknowledgment, there was a team that developed the  
9 information contained in this document.

10          Q     So would the summary on page one then be the  
11 team's collective voice?

12          A     Yes, sir.

13          Q     Let's look at page two. All of those  
14 employees or team members, are they all Brown &  
15 Williamson employees? Take your time and go through  
16 there to see, please.

17          A     At the time the document was written, yes,  
18 sir, they were all Brown & Williamson employees.

19          Q     Are any of those team members Brown &  
20 Williamson employees today?

21          A     Yes, sir.

22          Q     Would you point out which ones, please.

23          A     R.R. Black, B.B. Chakraborty, R.A. Gonterman,  
24 E.F. Litzinger, R.H. Marshall, and P.J. Martinez.

25          Q     Do you know where E.D. Alford is today?

1           A     No, sir.

2           Q     What about J.L. Ems?

3           A     No, sir.

4           Q     R.R. Johnson?

5           A     No, sir.

6           Q     D.G. Strubel?

7           A     No, sir.

8           Q     Or L.K. Templeton?

9           A     No, sir.

10          Q     What is Mr. Black's position with Brown &  
11 Williamson?

12          A     He is head of leaf blending.

13          Q     What about Mr. Chakraborty?

14          A     Mr. Chakraborty is in product development.

15          Q     Is he under Mr. McMurtrie?

16          A     Yes, I believe he is.

17          Q     What about Mr. Gonterman?

18          A     He's also in product development.

19          Q     Mr. Litzinger, what does he do?

20          A     I'm not certain what Mr. Litzinger is  
21 currently.

22          Q     What about Mr. Marshall?

23          A     I'm not sure of his exact role either.

24          Q     What about Mr. Martinez?

25          A     He's in product development.

1 Q And those people that are in product  
2 development, that's in Louisville; is that correct?

3 A No, sir. That's in Macon.

4 Q Now, let's go back to that paragraph I pointed  
5 you to earlier. It was: "Based upon our review, we  
6 feel that ammonia, its effects, and its "analogues"  
7 remain the "secret of Marlboro." The effects of ammonia  
8 can be seen throughout PM's strategy of flexible product  
9 design. Whether as tobacco/smoke ammonia, ammonium  
10 salts, recon, nicotine alteration, sugar-ammonia  
11 reactions, or smoke pH, ammonia appears to be the common  
12 thread throughout the history of Marlboro changes."

13 Have I read that correctly?

14 A Yes, sir.

15 Q Is it your belief today that ammonia, its  
16 effects, and its analogues are the secret of Marlboro?

17 A My personal belief?

18 Q Yes.

19 A I believe that ammonia affects tobacco taste  
20 and that helps make Marlboro taste the way it does, yes.

21 Q Why were you-all trying to figure out the  
22 secret of Marlboro?

23 A It was the number one product in the U.S.  
24 market.

25 Q Is it still that today?

1           A     Yes, sir.

2           Q     You believe it is today because of the  
3 ammonia?

4           A     I believe it's because of its taste, as one.  
5 That's one aspect. There is obviously a lot of other  
6 things, marketing and so on; but from a product  
7 standpoint, I believe that Marlboro has good taste.

8           Q     Which you believe in large part is because of  
9 the ammonia?

10          A     I believe that ammonia, as I said earlier, is  
11 a key aspect of flavor and taste.

12          Q     This last sentence in this paragraph begins,  
13 "Whether as tobacco/smoke ammonia," and it continues and  
14 you list off several different facets. Do you know what  
15 each of these -- what's the significance of each of  
16 these facets that you named, like what is tobacco/smoke  
17 ammonia as opposed to ammonia salt as opposed to recon?  
18 What do you mean in that sentence?

19          A     Well, I can certainly testify to which of  
20 these I know about from my knowledge. There is a belief  
21 that ammonia in smoke will react with other compounds to  
22 reduce irritation. I certainly believe that sugar-  
23 ammonia reactions are very key to generating flavorful  
24 compounds. That is certainly true in the reconstituted  
25 tobacco. That's one of the key areas where Philip

1 Morris does this. The smoke pH was a theory proposed  
2 that way. As we discussed before, I'm not a chemist.  
3 There were some that believed that changing the pH,  
4 which would change the acid base line on tobacco, would  
5 change how ammonia behaves or how nicotine might behave,  
6 and that was a theory proposed as well.

7 Q Is that what you mean when you say nicotine  
8 alteration?

9 A Yes, sir.

10 Q Do you know how the nicotine is altered?

11 A No, sir.

12 Q You just know that it was altered?

13 MR. McGAAN: Lacks foundation.

14 A I know this was proposed as a theory by  
15 members of this team.

16 Q Did you ever know if it was concluded that the  
17 ammonia that Philip Morris added actually did alter the  
18 nicotine?

19 A No, sir, I don't know if that's ever been  
20 concluded.

21 Q But it was a theory?

22 A Yes.

23 Q Did the theory not account for or did the --  
24 did the theory not hypothesize in what way the nicotine  
25 was altered?

1           A     I'd have to look through here if you want me  
2 to answer that.

3           Q     Okay, will you take a second please.

4           A     I don't see anything in here to that effect,  
5 but I went through it pretty quickly; so if there is  
6 some specific thing you want to reference me to, that  
7 would be fine.

8           Q     So today, as you sit here, you don't recall in  
9 what way this team hypothesized nicotine was altered by  
10 ammonia?

11          A     No, sir, based on reading this, I can't.

12          Q     And you don't have any independent  
13 recollection of it, do you?

14          A     No, sir.

15          Q     If you'll skip down to the next paragraph, the  
16 very last sentence reads, "Furthermore, this review has  
17 taught us that PM is more than willing to change and  
18 alter a growing sales proposition for manufacturing or  
19 other expediency." And I'm going to quit reading there  
20 because I want to ask you what do you mean. What does  
21 this mean when it says a growing sales proposition for  
22 manufacturing or other expediency?

23          A     I think what that refers to, having glanced  
24 through here, is the fact that they were changing  
25 their -- they would change their blend. They were not



1 adverse to changing their blend, changing the type of  
2 expanded tobacco, reducing the amount of reconstituted  
3 tobacco that they used based on capacity reasons. So  
4 these were the expediciencies of that.

5 Q That sentence goes on to read, "Perhaps, as  
6 long as they have the confidence in their compensation  
7 strategy." When this thing says compensation strategy,  
8 are you talking about all the things you just mentioned,  
9 the compensating for reconstituting tobacco, for  
10 ammonia?

11 A Yes, sir.

12 Q For any other part of the manufacturing  
13 process?

14 A Glancing through this, it means they would  
15 change their blend and they may increase or decrease  
16 their components.

17 Q Does Brown & Williamson use ammonia in the  
18 manufacture of cigarettes?

19 A As I said before, we use it in the manufacture  
20 of our reconstituted tobacco.

21 Q And you do that for taste?

22 A Yes, sir.

23 Q And taste only?

24 A The primary reason is taste. We also believe  
25 that because we use it in our hand cast reconstituted

1 process, that it helps release pectins that form the  
2 glue, glue in quotation marks, because it's the glue  
3 that makes the sheet like a piece of paper so it has  
4 strength and integrity.

5 Q Any other reasons why you use ammonia?

6 A Ammonia is a generator of taste and flavor.

7 Q Does nicotine have taste?

8 A I've never tasted pure nicotine.

9 Q Well, you say ammonia, you say it enhances or  
10 releases flavor, taste?

11 A Ammonia reacts with things like sugars to  
12 generate favorable compounds.

13 Q Do you know if it reacts with nicotine to  
14 release favorable compounds?

15 A I have no idea on that, sir.

16 Q The next paragraph, second to the last  
17 sentence reads, "To follow-up on recommendations  
18 contained in the presentation, a small team has been  
19 formed to determine next experimental steps." Do you  
20 know what those next experimental steps were?

21 A I don't recall them specifically, but I  
22 believe there was a slide back here that suggested  
23 continued work.

24 Q Could that possibly be the very last page of  
25 that document?

1           A     If I can refer you, sir, to page, looks like,  
2 107.

3           Q     Future work?

4           A     Yes, sir, and then page 108, and then page 110  
5 that you referred to was the recommendation on how to  
6 proceed.

7           Q     Did this team carry out these steps?

8           A     Sir, I don't know.

9           Q     You don't recall what you did on the secret of  
10 Marlboro after this report was compiled?

11          A     I can refer you back to page one. It says we  
12 have a SUPERIORITY project.

13          Q     You are reading the very next sentence?

14          A     The very last sentence. We did have a  
15 SUPERIORITY project to attempt to utilize technology to  
16 beat Marlboro. That was the objective for that project,  
17 so that work went on. I can speak to some specifics in  
18 the further work on pages 107 and 108. We did look at  
19 our -- you'll see on page 108, the first bullet, third  
20 down, CPCL process conditions. We did investigate that.

21          Q     What's CPCL?

22          A     That's our cast recon CPCL. CPCL is Brown &  
23 Williamson band cast recon. We did do additional  
24 analysis on Marlboros from around the world. Those, I  
25 can say, we did. The others, I don't recall if we did

1   them or not.

2           Q     And you don't --- I think you've already  
3   testified that you don't have anything to change this  
4   team's original hypothesis that ammonia was pretty much  
5   the secret to Marlboro?

6           A     I said I personally think ammonia is very  
7   important to the taste of Marlboro, yes, sir.

8           Q     None of those steps that you just testified to  
9   uncovered any evidence of any different secret of  
10  Marlboro, did they?

11          A     Well, I think if I go down the road from this  
12  and take that 20/20 hindsight, I think we believed that  
13  the actual top flavor used is probably more important  
14  than we gave it credit for at this time.

15          Q     The top flavor?

16          A     Yes, sir.

17          Q     What is that?

18          A     All cigarettes have, most all American  
19  cigarettes have top flavor supplied toward the end of  
20  the process. The most classic example would be menthol,  
21  if you will.

22          Q     You mentioned this last sentence where it  
23  says, "Eventually, this information will be applied  
24  within our SUPERIORITY project." Superiority is in all  
25  caps. Is that like Project AIRBUS, Project GREENDOT?

1 Is there a Project SUPERIORITY?

2 A Yes, sir. It was either called Project  
3 SUPERIORITY or Project BEST.

4 Q What was the purpose of that project?

5 A To develop a commercial product that would  
6 beat Marlboro.

7 Q Did Brown & Williamson employees work on that  
8 project?

9 A Yes, sir.

10 Q Did any other employees work on that, other  
11 than Brown & Williamson employees?

12 A I don't recall, sir.

13 Q You don't know of any employees from the BAT  
14 Group that worked on that?

15 A I don't know if they worked on this or not,  
16 sir.

17 Q Do you know who directed Project SUPERIORITY?

18 A To the best of my recollection, it was Herb  
19 Woertz, W-O-E-R-T-Z.

20 Q What was his title at that time?

21 A I don't know.

22 Q Sir, could you turn to page four. I'm reading  
23 from the bottom of the page, slide ten, "Information  
24 derived from Project GLOBE and BATCF reports on  
25 Marlboro." Could you tell me what Project GLOBE is?

1           A     My recollection is that Project GLOBE was a  
2     B.A.T., BATCo. Southampton research looking at Marlboro  
3     globally.

4           Q     So Project GLOBE was directed by BATCo.; is  
5     that correct?

6           A     Yes, sir, Southampton.

7           Q     Marlboro is marketed all over the world; is  
8     that correct?

9           A     Yes, sir.

10          Q     The next slide, number slide eleven, says,  
11     "The key question is to understand the mechanism of  
12     compensation." Compensation as it's used here, is it  
13     being used as the same way as you testified, we talked  
14     about earlier?

15          A     Yes, sir, looking at the context of pages 9,  
16     10, and 11 together, compensation means how they tailor,  
17     alter, revise their plan to maintain the same type of  
18     basic smoke character effect.

19          Q     You say all of the topics that are mentioned  
20     on pages 9, 10 and 11 are included in the word  
21     "compensation" as used in that sentence regarding slide  
22     11?

23          A     I didn't say that. I said this is a sequence  
24     of slides that suggests that Marlboro is different  
25     around the world, in the U.S., and over time; that we've

1 seen it different in local and export manufacture; that  
2 we've blended composition tailored to marketing and  
3 restrictions. The blend chemistry falls in various  
4 groups, and that then says they use different blends  
5 depending on point of manufacture and location, yet they  
6 have the same smoke quality. The question mark bullet  
7 point there on slide 11 says compensation, question  
8 mark, which is a suggestion that if they can do all  
9 these things, do they have a means of compensating their  
10 blend to get that same smoke character throughout.

11 Q On page five, if you'll look down at slide 30,  
12 the second, the third sentence says, "Comparison of,  
13 quote, as is, unquote, versus, quote, ex-cigarette,  
14 close quote, clearly shows nicotine scavenging." Could  
15 you please tell me what that means when it says  
16 comparison of as is versus ex cigarette?

17 A That's comparing reconstituted tobaccos, I  
18 believe, at different points in the manufacturing  
19 process.

20 Q Where is as-is in the manufacturing process?

21 A Before it was in the cigarette. One is before  
22 and one is aged.

23 Q Ex-cigarette means what?

24 A Out of the pack.

25 Q Out of the pack?

1           A     Yes, sir.

2           Q     Do you know what nicotine scavenging means?

3           A     I believe I'm aware of what they were  
4 referring to there. May I refer to the slides?

5           Q     Sure.

6           A     The concept, as I recall, is that, and this  
7 would happen with any blend components, that if you set  
8 up a chemical imbalance and you have a labile chemical,  
9 it would move between blend components to reach an  
10 equilibrium.

11          Q     Did you say labile?

12          A     Yes. Yes, I did say labile, but I'm not a  
13 chemist. That's probably layman's. It's more like  
14 diffusion mechanism. If something is rich and something  
15 else is poor, you'd have a diffusion of high-low.

16          Q     So you'd meet in the middle?

17          A     You would meet in whatever the equilibrium  
18 conditions are.

19          Q     One out of ten, one out of ten would end up  
20 having five? Very simplistic terms, I understand.

21          A     Very simplistic terms, that is that, yes, sir.  
22 Be like putting a wet sponge and dry sponge in the same  
23 bag. They'd both be wet sponges eventually.

24          Q     What's the significance of nicotine  
25 scavenging?



1           A     I don't know if there is any significance to  
2 it, sir. It was a phenomenon that was observed.

3           Q     Do you recall how long you and this team  
4 worked on this report, how many man-hours, how many  
5 months?

6           A     No, sir, I don't recall.

7           Q     Do you think it was months or years?

8           A     For this specific report?

9           Q     The testing and everything that went into it,  
10 of course, as well, not just typing it up.

11          A     As you can see, a lot of this was based on  
12 testing that had been done for many years. Obviously,  
13 the team that worked on this report didn't do all that  
14 testing.

15          Q     The testing you are referring to wasn't  
16 necessarily done so that this report could be made,  
17 though, was it?

18          A     No, sir.

19          Q     What I'm asking is do you know how long it  
20 took to go look at those tests to do whatever it took to  
21 come up with this report?

22          A     I don't recall specifically.

23          Q     Do you think it took a week or a month, a  
24 year, five years, any idea?

25          A     Probably less than a year.

1 Q A few months?

2 A I just don't recall.

3 Q Do you have any idea how much money it cost to  
4 do this report?

5 A No, sir.

6 Q The BAT company -- I'm not talking about  
7 BATCo. but the BAT subsidiary in Australia -- did it  
8 compete directly against Marlboro?

9 A I believe Marlboro was sold in Australia, yes,  
10 sir.

11 Q Would the same apply to the BAT Company in  
12 Germany?

13 A Yes, sir.

14 Q What about BATCo. itself?

15 A Marlboro is marketed all over the world,  
16 including the United Kingdom.

17 Q Does BATCo. make cigarettes?

18 A The cigarettes are made in the Southampton  
19 factory.

20 Q Right. I'm asking is that BATCo., is it  
21 actually a BATCo. company?

22 A BATCo. is a wrong term. I'm not sure I  
23 understand. I would have called Southampton part of  
24 BATCo., yes. If there is some other legal definition of  
25 BATCo. I'm not aware of, I don't know.

1 Q If someone says who makes Kool cigarettes, you  
2 wouldn't say BATCo., would you?

3 A No, sir.

4 Q That's why I'm asking does BATCo. make  
5 Marlboro cigarettes?

6 A Yes. The Southampton factory is part of  
7 BATCo.

8 Q And Marlboro sells in the United Kingdom?

9 A Yes, sir.

10 Q So BATCo. is in competition with Philip Morris  
11 on Marlboros?

12 A Yes, sir.

13 (Deposition Exhibit Gordon 2 was marked.)

14 Q Mr. Gordon, you have been handed what has been  
15 marked as Exhibit 2. Is this document not a May 11,  
16 1995 fax from you to several different people?

17 A Yes, sir.

18 Q Could you please go through this fax to list  
19 and tell me to the best of your knowledge what these  
20 people's positions are?

21 A At the time, Norman Davis was head of  
22 production for BATCo. I'm sorry. Head of -- yes, head  
23 of production for BATCo. Ian Snowden was head of leaf  
24 for BATCo. Louisa Luiz Saboia was a retired Souza Cruz  
25 manufacturing head. Werner Zapf is head of production

1 for BAT Germany. Erwin Kausch Reported to Mr. Zapf and  
2 also there at the R&D in BAT Germany. Tilford Riehl was  
3 vice-president of R&D for B&W. Randy Harrison was  
4 vice-president of leaf for B&W. John Jewell at the time  
5 was vice-president of manufacturing for B&W. And Ed  
6 Hyslop with Bain was a consultant under contract. Earl  
7 Kohnhorst at the time was executive VP of operations for  
8 Brown & Williamson. Stuart Aiken worked for Norm Davis  
9 and BATCo. I don't know what his specific title was.

10 Q Worked for who?

11 A Norman Davis.

12 Q At BATCo.?

13 A Yes, sir.

14 Q The very first sentence mentioned BATTALION  
15 Production Drive Team. Could you please tell me what  
16 is -- BATTALION is a project, isn't it? Isn't there a  
17 Project BATTALION?

18 A There was a Project BATTALION, yes, sir.

19 Q Could you tell me what that project is,  
20 please?

21 A That project was designed, the production part  
22 of it was designed to see how we could organize our  
23 manufacturing and operations within the BAT Group of  
24 companies to become more efficient in our operations  
25 globally.

1 Q This is akin to that data base you were  
2 talking about earlier; right?

3 A That's a bit different than developing a data  
4 base.

5 Q It's a larger scale?

6 A Yes.

7 Q We are talking about all tobacco operations  
8 for the BAT Group now when we are talking about Project  
9 BATTALION?

10 A Yes, sir, with the exception of Imperial  
11 Canada.

12 Q Why wasn't Imperial Canada not included in  
13 BATTALION?

14 A They reported to B.A.T Industries separately.

15 Q All the people that are on this distribution  
16 list, are those all people that are on the BATTALION  
17 Production Drive Team?

18 A Yes, sir, I believe they were.

19 Q Were you on the BATTALION Production Drive  
20 Team?

21 A I was Mr. Kohnhorst's assistant on the team.

22 Q How often did you-all meet?

23 A I'm going to say the team got together three  
24 or four times in 1995.

25 Q The team got together three or four times in

- 1 1995?
- 2 A Yes, sir.
- 3 Q Was there a head of the team?
- 4 A Yes, sir.
- 5 Q Who was that?
- 6 A Earl Kohnhorst.
- 7 Q What was his position? Was it chairman or
- 8 president of the team, team leader?
- 9 A Team leader.
- 10 Q How long did the team exist?
- 11 A Until November or December.
- 12 Q Of 1995?
- 13 A Yes, sir.
- 14 Q When did it start?
- 15 A April of 1995.
- 16 Q Existed from around April of '95 until
- 17 October?
- 18 A October, November '95.
- 19 Q Why did it end in October or November of '95?
- 20 A At that time B.A.T Holdings was formed by a
- 21 board that included various regions and staff functions.
- 22 Q So there just wasn't any need for BATTALION
- 23 Production Drive Team when you had B.A.T Holdings; is
- 24 that correct?
- 25 A Well, this was, part of the production drive

1 team led to the creation of an operations director on  
2 the B.A.T Holdings board.

3 Q I'm sorry. Could you repeat that, please?

4 A The production drive team led to the position  
5 on the B.A.T Holdings board of operations director.

6 Q But the production drive team, it doesn't  
7 exist today; is that correct?

8 A No, sir.

9 Q Do you know who decided that there was going  
10 to be a B.A.T Holdings?

11 A No, sir.

12 Q Have no idea how that came into existence?

13 A No, sir.

14 Q Were you just told, okay, there is not going  
15 to be a production drive team anymore, we've got B.A.T  
16 Holdings now?

17 A Yes. Basically there was an announcement, I  
18 want to say in November of '95, that formed B.A.T  
19 Holdings and the following regions and following  
20 functions on the board.

21 Q The production drive team didn't have any set  
22 meetings, did it, meeting times, did they?

23 A No, sir. It wasn't like that. It was ad-hoc  
24 meetings as necessary to get together.

25 Q And again, you said the purpose of the

1 production drive team was to coordinate activities?

2 A Well, it was to determine how the whole BAT  
3 Group could better coordinate activities.

4 Q We are talking about tobacco activities;  
5 right?

6 A Yes, sir, we are talking about production,  
7 manufacturing, all those things.

8 (Deposition Exhibit Gordon 3 was marked.)

9 Q If you'll look again at Exhibit 2, in the  
10 second sentence you say: "I have attached a summary  
11 table as well as several pages of excerpts from our  
12 prior Marlboro comparisons."

13 A Yes, sir.

14 Q When you look at Exhibit 3, does Exhibit 3,  
15 does that look to you to be the document referenced in  
16 Exhibit 2? And I'm going to represent to you that my  
17 copy appears to skip several pages. So my question  
18 would be better phrased does Exhibit 3 appear to be a  
19 less than complete copy of what was attached to Exhibit  
20 2.

21 A Well, referring back to Exhibit 2, we attached  
22 a selection, as it says, several pages of excerpts from  
23 a report. The report I used was probably this one here.  
24 Whether, in fact, these are the exact pages, without it  
25 being attached, I couldn't say.



1 Q That's what I'm asking. It's possible that  
2 Exhibit 3 is a complete attachment to Exhibit 2, but you  
3 only attached some excerpts so that's why there could be  
4 some pages missing in Exhibit 3?

5 A Yes, sir.

6 Q If you'll look at the first page of Exhibit 3,  
7 it states, "Restricted, Brown & Williamson Tobacco  
8 Corporation, Research & Development, PM's Global  
9 Strategy: Marlboro Product Technology, Mr. D.L. Gordon,  
10 October 23rd, 1992," doesn't it?

11 A Yes, sir.

12 Q That is you, D.L. Gordon; correct?

13 A Yes, sir?

14 A Yes, sir.

15 Q On the second page, the last paragraph, it  
16 says, "This report updates our data base on Marlboro to  
17 include recent data generated in key centers in the BAT  
18 Group. The information has been summarized and reviewed  
19 by scientists in the various groups and represents a  
20 collective judgment of the critical product technologies  
21 utilized by PM. This information can assist the BAT  
22 product developers by prioritizing activities as we  
23 strive for worldwide superiority." And I read all that  
24 to ask you who are the BAT product developers.

25 A That would be the people responsible on the

1 various BAT Group companies for product development.

2 Q There was no independent body of people called  
3 BAT product developers?

4 A No, sir.

5 (Deposition Exhibit Gordon 4 was marked.)

6 Q Mr. Gordon, you've been handed what has been  
7 marked as Exhibit 4. And I believe this document on the  
8 front page, it looks like a cover that says,  
9 "Restricted, Brown & Williamson Tobacco Corporation,  
10 Research & Development Department, Quarterly Report,  
11 July, August, September 1975"; is that correct?

12 A I believe so.

13 Q Pardon?

14 A I believe so. That 75 is hard to read there,  
15 but you can see it.

16 MR. HERRINGTON: Can we go off  
17 the record for a second?

18 (Brief recess.)

19 Q Mr. Gordon, you've been handed what's been  
20 labeled Exhibit 4, and we've already identified that;  
21 correct?

22 A Yes, sir.

23 Q Could you please look at the second page of  
24 the document that says, "Quarterly Report, July, August,  
25 September 1975." Do you see what I'm reading?

- 1           A     Yes.
- 2           Q     Could you please tell me are all of the  
3 persons on the distribution list Brown & Williamson  
4 employees?
- 5           A     No, sir, I don't believe so.
- 6           Q     Could you point out the ones that are not?
- 7           A     Haslam, Green, Felton, Nicholls, Gibb, Wade,  
8 Sottorf, Seehofer, I don't believe were B&W employees.
- 9           Q     Where did Dr. Haslam work?
- 10          A     I don't know, sir.
- 11          Q     You don't know?
- 12          A     I don't know.
- 13          Q     Would it have been another BAT Group company?
- 14          A     I don't know.
- 15          Q     What about Dr. Green?
- 16          A     I believe Dr. Green was in charge of the  
17 Southampton R&D.
- 18          Q     He's now deceased; correct?
- 19          A     I don't know, sir.
- 20          Q     What about Dr. Felton?
- 21          A     I don't know, sir.
- 22          Q     Dr. Nicholls, I mean, Mr. Nicholls?
- 23          A     Don't know, sir.
- 24          Q     What about Gibb?
- 25          A     Don't know, sir.

1 Q Wade?  
2 A Don't know, sir.  
3 Q Sottorf?  
4 A Don't know, sir.  
5 Q Seehofer?  
6 A Don't know, sir.  
7 Q The reason you say you don't think they are  
8 Brown & Williamson employees, is that because you have  
9 no idea who they are other than Green, who you testified  
10 to?  
11 A Well, some of the names are from other B.A.T.  
12 Locations. I'm certain of that. But I wouldn't know  
13 specifically. You asked me if I specifically knew where  
14 they were, and I don't know that. I can certainly  
15 recognize them as being -- this is 1975, so I was with  
16 the company two years.  
17 Q It says issued by Dr. Sanford. Was that when  
18 he was VP of R&D?  
19 A He was in charge of R&D. I don't know what  
20 his title was.  
21 Q It says compiled by Esterle, Knoop, and  
22 Philpot?  
23 A Yes, sir.  
24 Q Those three persons are all Brown & Williamson  
25 employees. You've had time to look over this document;

1 correct?

2 A I glanced through it, sir.

3 Q From your glancing at it, does this appear to  
4 be a catalog of the research projects that Brown &  
5 Williamson is involved in?

6 A I didn't pull this report together, sir.

7 Q Do you have any understanding of what this  
8 document is?

9 A No, sir, I don't recall this document at all.

10 Q You do not recall it?

11 A No, sir.

12 Q It says it's a quarterly report for July,  
13 August, September of 1975, and we can tell that it's put  
14 out by Brown & Williamson Tobacco Corporation Research  
15 and Development Department, but you can't tell whether  
16 this is a listing of different research projects or  
17 research areas that Brown & Williamson is at that time  
18 involved in or planning on becoming involved in?

19 A Sir, this is an awfully long list of projects  
20 for me to comment specifically that I know exactly what  
21 these projects were, sir.

22 Q But it looks like a list of projects, though,  
23 doesn't it?

24 A Yes, sir.

25 Q But you don't know whether this document would

1 constitute the R&D plan for this particular time period?

2 A No, sir, I couldn't comment on that.

3 Q You don't know, all right. Would you please  
4 go to page five. Do you see the very top project  
5 listed, number 288, tobacco substitutes?

6 A Yes, sir.

7 Q Do you have any -- and also on page four, it's  
8 where tobacco substitutes starts but it continues over  
9 to page five. Do you know why Brown & Williamson was  
10 looking into tobacco substitutes?

11 A I don't know that, sir.

12 Q Would you please turn to page eight, project  
13 number 358. It says, "Chemical Alteration of Tobacco";  
14 correct?

15 A Yes, sir.

16 Q Under that it says, "To control tobacco and  
17 smoke properties via chemical reaction with various  
18 tobacco." Is that what it says?

19 A Yes, sir.

20 Q Do you have any idea what smoke properties  
21 it's talking about?

22 A No, sir.

23 Q Could you please turn to page 21, project  
24 number 343. It says, "Biological Investigations," does  
25 it not?

- 1           A     Yes, sir.
- 2           Q     Do you know what that means?
- 3           A     No, sir.
- 4           Q     Under that it says, "To keep abreast of  
5     current developments in biological testing of cigarette  
6     smoke and to develop rapid methods for comparison of  
7     relative activity of smoke samples." Could you tell me  
8     what rapid methods means?
- 9           A     No, sir.
- 10          Q     You have no idea?
- 11          A     No, sir. I don't know this project.
- 12          Q     At this time you were in the R&D department at  
13     Brown & Williamson; correct?
- 14          A     Yes, sir.
- 15          Q     But you have no idea about any of the things  
16     we've gone over?
- 17          A     No, sir. I was a process engineer.
- 18          Q     Turn to page 22, please. Project number 341  
19     is what's labeled Cooperative Industry Work; correct?
- 20          A     Yes, sir.
- 21          Q     Under that it says, "To work with other  
22     tobacco companies on problems of industry concern." Do  
23     you have any idea what that project is?
- 24          A     No, sir.
- 25          Q     Do you have any idea what problems are of

1 industry concern?

2 A No, sir.

3 Q If you will turn through past the list, there  
4 is an -- it's Bates stamp number ending in 762. It says  
5 at the top, "R&D Expense by Projects, July, August,  
6 September 1975"; correct?

7 A Yes, sir.

8 Q If you will go to page four of that, please,  
9 down at the very bottom it says, "B.A.T. Product and  
10 Mechanical Development"; correct?

11 A Yes, sir.

12 Q Could you tell me what that is?

13 A No, sir.

14 Q Pardon?

15 A No, sir, I don't know what that is.

16 Q At this time you were involved in process  
17 engineering; correct?

18 A Yes, sir.

19 Q But you don't know what B.A.T. product  
20 mechanical development is?

21 A No, sir.

22 Q You see is that \$90,000 is allocated toward  
23 that? Is that what this appears to say down at the  
24 bottom?

25 A It says 90,000.



- 1 Q Would you turn to the next-to-last page of  
2 this document, please. You see what looks like a  
3 checkout card?
- 4 A Yes, sir.
- 5 Q Can you read any of those names?
- 6 A The first one looks like P.H. Cogbill.
- 7 Q Do you know who that is?
- 8 A He was a scientist at R&D at the time.
- 9 Q Does that second name look like Kohnhorst?
- 10 A It could be that, yes, sir.
- 11 Q Does the third one, does that look like J  
12 illegible E?
- 13 A Yes, sir.
- 14 Q Do you have any idea who that would be?
- 15 A It could be Jill Esterle. That's J.G.E.
- 16 Q Right under it it says law, does it not?
- 17 A That's the way it appears to read in mine.
- 18 Q Do you know what that references?
- 19 A No, sir.
- 20 Q Could it be the law department?
- 21 A Could be.
- 22 Q Do you know of anybody in R&D named Law during  
23 this time?
- 24 A I wouldn't have any idea.
- 25 Q This document is fairly lengthy, and you said,

1 I believe, that it looks to you like a list, correct, a  
2 list of projects?

3 A I believe I said it's a list of what appears  
4 to be projects, but that's about all I can --

5 Q So it does appear to be a listing of projects;  
6 correct?

7 A I'm going to say yes.

8 Q That's what it looks like to me. I'm just  
9 asking if you agree. If you don't, you don't.

10 A I don't know exactly what this document is.  
11 It certainly appears to be a list of projects or work  
12 that was being done.

13 Q Could you take another moment and go through  
14 there and point out to me which projects deal with  
15 determining whether smoking causes disease?

16 MR. McGAAN: Object; lacks  
17 foundation.

18 Do you understand the question?

19 A I wouldn't be able to answer it.

20 Q You are saying you don't know whether any of  
21 these projects --

22 A I'm not an expert, sir.

23 Q -- were aimed at determining whether smoking  
24 causes cancer?

25 A I'm not an expert in that field, sir.

1 (Deposition Exhibit Gordon 5 was marked.)

2 Q Mr. Gordon, you've been handed what has been  
3 marked as Exhibit 5; correct?

4 A Yes, sir.

5 Q I believe this document is entitled Review of  
6 Nicotine Alkaloids in Tobacco and Smoke; correct?

7 A Yes, sir.

8 Q The first sentence says, "Here is a list of  
9 reported minor alkaloids in tobacco and/or smoke  
10 excluding the alkyl pyridines which are probably not  
11 pharmacologically active"; is that correct?

12 A That's what the statement reads; yes, sir.

13 Q Could you tell me what pharmacologically  
14 means?

15 A No, sir.

16 Q That term has no meaning to you whatsoever?

17 A I couldn't give you a strict definition.

18 Q I'm just asking for your understanding.

19 A I'm not an expert there, so I feel hesitant to  
20 do that.

21 Q I understand you are not an expert and I  
22 understand that; therefore, you couldn't give me an  
23 expert definition. I'm just asking what is your  
24 understanding of it. I mean, I understand you are not  
25 testifying as an expert.

1           A     I feel hesitant to testify at all under oath  
2 if I couldn't give a reasonably good definition. You  
3 put me in an unfair position, sir.

4           Q     Do you have an understanding in your head, do  
5 you have an understanding of what it means to be  
6 pharmacologically active?

7           A     Yes, sir.

8           Q     Okay. I'm just asking what that understanding  
9 is.

10          A     It interacts with the body.

11          Q     If something is pharmacologically active, then  
12 it interacts with the body, according to your  
13 understanding?

14          A     According to my definition.

15          Q     Can you tell from this sentence whether this  
16 list is a list of items which are pharmacologically  
17 active?

18                   MR. McGAAN: Object; lacks  
19 foundation.

20          A     I have no idea.

21          Q     Turn to page two, please.

22          Q     Do you see the heading Nornicotine in the  
23 middle of the page?

24          A     Yes, sir.

25          Q     If you'll look at the third sentence in that

1 paragraph, which says, "Glock studied the effects of  
2 this alkaloid on smoker perception by adding nicotine  
3 and nornicotine as the malic acid salts to separate lots  
4 of tobacco at the same weight levels." Did I read that  
5 correctly?

6 A Yes, sir.

7 Q Do you know what nornicotine is?

8 A No, sir.

9 Q Do you have any idea whether this adding of  
10 nicotine or nornicotine is in the cigarette  
11 manufacturing process?

12 MR. McGAAN: Object; lacks  
13 foundation.

14 A We do not add nicotine or nornicotine to  
15 products.

16 Q Who is we?

17 A Brown & Williamson.

18 Q Do you know who Glock is?

19 A No, sir.

20 Q Would you turn to the back page. Do you see  
21 the name C.J. Rosene?

22 A Yes, sir.

23 Q Do you know who that is?

24 A C.J. Rosene, he was an employee in R&D.

25 Q At Brown & Williamson?

1           A     Yes.

2           Q     And you are listed as getting a copy of this,  
3 aren't you?

4           A     It says so, yes.

5           Q     Do you ever recall seeing this?

6           A     No, sir.

7           Q     Is it possible you did get it and you just  
8 don't remember?

9           A     I just don't recall getting it or not getting  
10 it, sir.

11          Q     So you don't know, going back to page two, who  
12 Glock is?

13          A     No, sir.

14          Q     Do you have any understanding of what is being  
15 talked about in that sentence?

16          A     I can read what the sentence says. It doesn't  
17 mean anything to me.

18          Q     You don't know what he's talking about when  
19 he's talking about adding nicotine or nornicotine?

20          A     I can read the sentence. It says, "Glock  
21 studied the effects of this alkaloid on smoker  
22 perception by adding nicotine and nornicotine as the  
23 malic acid salts to separate lots of tobacco at the same  
24 weight levels."

25          Q     The sentence above that says, "It is said that

1 cigarettes containing higher levels of nornicotine  
2 impart objectionable smoke taste and aroma"; correct?

3 A That's what the sentence says, yes.

4 Q The sentence we just read talks about Glock  
5 studied the effects of this alkaloid on smoker  
6 perception by adding nicotine and nornicotine. Would  
7 that not seem to say to you that nicotine and  
8 nornicotine has been added to the cigarette?

9 MR. McGAAN: Object; calls for  
10 speculation.

11 A I can't answer that. I don't know what this  
12 is referring to, sir.

13 Q Will you look down at the third paragraph  
14 under Nornicotine. It says, "A panel of smokers  
15 preferred the cigarettes with added nicotine over those  
16 with added nornicotine." Do you have an understanding  
17 of what that sentence means?

18 MR. McGAAN: It calls for  
19 speculation.

20 A All I can do is read the sentence. You've  
21 already read it.

22 Q Does that sentence not seem to suggest that a  
23 panel of smokers smoked some cigarettes that had  
24 nicotine added to it and they preferred those over the  
25 ones that had nornicotine added to them?

1       A     I can read the sentence that says, "A panel of  
2 smokers preferred the cigarettes with added nicotine  
3 over those with added nornicotine." That's all it says.

4       Q     I'm just asking --

5       A     I can only tell you. I can't speculate on it.

6       Q     You don't know whether this suggests a panel  
7 of smokers preferred cigarettes with added nicotine over  
8 added nornicotine?

9               MR. McGAAN: Calls for  
10 speculation. Lacks foundation as to the  
11 actual research that's being referred to.

12       A     All I can do is read the sentence. I can't  
13 speculate.

14       Q     The last page under the heading  
15 Nicotine-N-Oxide, it says, "There is little evidence to  
16 prove conclusively that nicotine-N-oxide is present in  
17 fresh cigarette smoke or that its presence in smoke  
18 would be cause for concern. The suspicion of  
19 carcinogenicity is based upon structural analogy to -- I  
20 believe that's purine-N-oxides which have been shown to  
21 produce tumors in rats. However, nicotine-N-oxide is  
22 present in human smokers and is presumed to be a  
23 detoxification product of nicotine." Do you have any  
24 understanding of what that paragraph means?

25       A     No, sir.



1 Q Would you look at this list of people who have  
2 been carbon-copied. Are all of those persons Brown &  
3 Williamson employees?

4 A Except Dr. G.B. Gori.

5 Q Who does he work for?

6 A He was a consultant.

7 Q Do you know what company he was with, what  
8 consulting firm? Was he with a consulting firm?

9 A He may not have been. He may have been an  
10 independent.

11 Q You don't know whether he had any affiliation  
12 with a consulting firm?

13 A No, sir.

14 Q Do you know where he is now?

15 A No, sir.

16 (Deposition Exhibit Gordon 6 was marked.)

17 Q Mr. Gordon, you have been handed what has been  
18 marked as Exhibit 6. This document at the top of the  
19 page says, "Process Department, File Note, April 8,  
20 1980," does it not?

21 A Yes, sir, I believe that's what it says.

22 Q Under that, I believe it says, "Nicotine  
23 Engineering in Diet Process/52," and then there's  
24 possibly another number there but appears illegible;  
25 correct?

1       A     Yes, sir.

2       Q     The first sentence under there says, "The  
3   major mechanism in nicotine loss in the dryer appears to  
4   be vaporization"; correct?

5       A     Yes, sir.

6       Q     Then two paragraphs down from that, the  
7   sentence reads, "The objective of this note is to  
8   propose certain means to reduce nicotine loss during  
9   expansion or to recover and judiciously utilize it";  
10   correct?

11      A     That's what it says, yes, sir.

12      Q     So at some point during the cigarette  
13   manufacturing process, is nicotine lost?

14      A     Yes, sir.

15      Q     What is the DIET process?

16      A     It's an expanded tobacco process.

17      Q     What do you do in that DIET process?  What's  
18   being done to the tobacco?

19      A     It's being impregnated with liquid carbon  
20   dioxide, and the pressure is being reduced so that you  
21   form solid carbon dioxide, and the solid carbon dioxide  
22   is being vaporized to gaseous carbon dioxide in the  
23   dryer, during which time the cell structure of the  
24   tobacco expands.

25      Q     What does that do?  Why do you do that?

1           A     Expanded tobacco is used primarily to reduce  
2     the weight of cigarettes and save money.

3           Q     You are talking about literally the actual  
4     weight of it?   Put it on a scale, it's going to be less  
5     if you used expanded tobacco?

6           A     The cigarette would weigh less, yes, sir.

7           Q     It says that the objective of this note is to  
8     propose certain means to reduce nicotine loss during  
9     expansion or to recover and judiciously utilize it?

10          A     Sir, that's what that sentence says.

11          Q     If you go to page two, down at the bottom of  
12     the page it says Nicotine Utilization.

13          A     Yes, sir.

14          Q     And number one says, "Adding-back to DIET  
15     Tobacco," doesn't it?

16          A     Yes, sir.

17          Q     Does that appear to be adding nicotine to the  
18     manufacturing process?

19                   MR. McGAAN:   Object;  
20     mischaracterizes the document.

21          A     Sir, is there a question I need to answer?

22          Q     My question is doesn't this appear that  
23     nicotine is being added back during the manufacturing  
24     process?

25                   MR. McGAAN:   Same objection.

1           A     We do not add nicotine back.

2           Q     Do you know why this head note would be saying  
3 adding-back to DIET tobacco?

4           A     I'll go right back to the statement you read  
5 me earlier where the objective is to approach certain  
6 means to either reduce or, et cetera, et cetera, to  
7 reduce nicotine loss or to recover nicotine judiciously  
8 utilize it.

9           Q     What does it mean to recover nicotine?

10          A     Well, sir, the file note written by Mr. Wu and  
11 Mr. Korte says here is a -- I don't even see any  
12 experimentation. It's just saying here are some  
13 possibilities of what one could do to accomplish this  
14 objective, as stated up here.

15          Q     So is this saying you could add nicotine back  
16 but it's not necessarily saying they did? Is that what  
17 you are saying?

18          A     That's what my reading is, yes, sir.

19          Q     Is it possible to add nicotine back?

20          A     It's possible to add nicotine back to  
21 anything.

22          Q     At what point in the manufacturing process is  
23 the nicotine lost?

24          A     Nicotine will be lost anytime there is a  
25 significant change in pressure or temperature of the

1 tobacco. It will be lost just like any other compound  
2 that has vapor pressure.

3 Q And does Brown & Williamson just compensate --  
4 do they just know that amount of nicotine is going to be  
5 lost and just go ahead and make a cigarette with that  
6 much less nicotine?

7 A I'll answer the question this way: We do not  
8 recover nicotine and we do not add nicotine to our  
9 products.

10 Q So the plant out in the field has a certain  
11 amount of nicotine in it; correct?

12 A Yes, sir.

13 Q And then the final cigarette has a certain  
14 amount of nicotine in it; correct?

15 A Yes, sir.

16 Q At some point, you lose nicotine; correct?

17 A Yes, sir.

18 Q And Brown & Williamson just realized we are  
19 going to lose some nicotine, why don't we do this, but  
20 here is our final product?

21 A Yes, sir.

22 (Deposition Exhibit Gordon 7 was marked.)

23 Q Mr. Gordon, you've been handed what has been  
24 marked as Exhibit 7. This document says that it is  
25 Brown & Williamson Tobacco Corporation, Research &

1 Development, Internal Correspondence. It's from T.F.

2 Riehl to R.J. Pritchard; correct?

3 A Yes, sir.

4 Q Mr. Pritchard was formerly the CEO of Brown &  
5 Williamson; correct?

6 A Yes, sir.

7 Q And on March 3rd of 1988, the date of this  
8 document, he was the CEO of Brown & Williamson; correct?

9 A I believe he was.

10 Q It says carbon copy to Mr. Sandefur. What was  
11 his position at this time?

12 A He was our chief operating office, I believe.

13 Q What was Mr. Pritchard then?

14 A Chief executive officer.

15 Q Okay, the chief operating, sorry. On page  
16 two, first paragraph there states, "The second  
17 application area is new products where, we believe, Y1  
18 can eventually be best exploited. Internal work is in  
19 progress to develop LIGHTS and ULTRA products with  
20 moderate to high levels of Y1. The intent here is to  
21 use Y1 as a means of satisfying smokers of higher tar  
22 products."

23 We talked about the nicotine level of Y1 as  
24 opposed to other types of tobacco. Do you remember that  
25 conversation?

1           A     Yes, sir.

2           Q     Does Y1 have higher levels of tar than other  
3 types?

4           A     I don't know, sir.

5           Q     This last sentence I read, "The intent here is  
6 to use Y1 as a means of satisfying smokers of higher tar  
7 products, I'm going to ask you, based on your knowledge  
8 of the cigarette industry which dates back to 25 years  
9 ago, do smokers smoke because of the tar in cigarettes?

10          A     My opinion is smokers smoke for a lot of  
11 reasons. Taste, flavor, delivery, all of that is part  
12 of the smoking experience.

13          Q     But has high tar ever been given as a reason  
14 that you know of for someone to enjoy smoking?

15          A     No, sir. I smoke high-tar cigarettes.

16          Q     Do you smoke them because they have high tar  
17 in them?

18          A     I smoke them because I like the flavor of  
19 them.

20          Q     Would you agree with the proposition that the  
21 higher the tar content, the higher the nicotine content  
22 in a cigarette?

23          A     I'm not a product designer or developer, so I  
24 can't -- I mean, I would suggest that in general over  
25 some ranges of product design primers tar and nicotine

1 deliveries in the cigarette would move up and down  
2 proportionately.

3 Q Proportionately?

4 A At some proportion, and that proportion could  
5 differ over small ranges.

6 Q It's not an inverse proportion, is it? If you  
7 lower the tar, you are not necessarily going to raise  
8 your nicotine and vice versa, are you?

9 A I couldn't say that would be possible or not  
10 possible.

11 Q You couldn't say whether it would be possible  
12 or not possible?

13 A No, sir. I'm not an expert in that field.  
14 There is a full range of things one could do.

15 Q Do you have any idea how Y1 would be used to  
16 satisfy smokers of higher tar products?

17 A No, sir, I don't.

18 THE WITNESS: Could we take a  
19 break?

20 (Brief recess.)

21 (Deposition Exhibit Gordon 8 was marked.)

22 Q Mr. Gordon, you have been handed what has been  
23 marked Exhibit 8; correct?

24 A Yes, sir.

25 Q This document, I believe, at the top says,



1 "Brown & Williamson Tobacco Corporation, Research,  
2 Development & Engineering, Meeting Report, Subject:  
3 Nicotine - Interest; and Proposed Research/399";  
4 correct?

5 A Yes, sir.

6 Q And it's dated June 11, 1985; correct?

7 A Yes, sir.

8 Q It shows a number of people as being present  
9 at this meeting. Could you look at those people and  
10 tell me are all of those people Brown & Williamson  
11 employees?

12 A Except Dr. Gori, Dr. G.B. Gori.

13 Q That's the only one who is not a B&W employee?

14 A Yes, sir.

15 Q The first sentence here says, "Given that  
16 nicotine produces no demonstrated chronic effects in  
17 man --" I'm going to stop reading. Do you have any idea  
18 what that means?

19 A No, sir.

20 Q The next sentence says, "As outlined below, we  
21 will first review what is known about nicotine and then  
22 formulate specific plans to achieve our goals,  
23 parentheses, positive physiological response without  
24 harshness and bitter taste." Does it appear to you that  
25 that phrase in parentheses is in fact the goal or goals

1 referenced in that sentence?

2 A That's the way the sentence would read, sir.

3 Q Do you know what that goal means?

4 A No, sir.

5 Q You don't know what a positive physiological  
6 response would be?

7 A No, sir.

8 Q I take it, then, you wouldn't know what a  
9 negative physiological response would be?

10 A No, sir.

11 Q Would you turn to the second page, please. It  
12 says at the top, "Current/Anticipated Areas of  
13 Interest." The third paragraph says, "Bioavailability  
14 of nicotine at varying TPM/nicotine and/or  
15 menthol/nicotine ratios, parentheses, the high nicotine  
16 tobaccos from DNAP work will be useful here." Do you  
17 have any idea what that sentence means?

18 A It's two sentences there, so far as I know.

19 Q I believe you are right. Do you have any idea  
20 what those two sentences --

21 A The second sentence, I would presume, refers  
22 to Y1. The first sentence, I couldn't comment on  
23 bioavailability of nicotine.

24 Q Do you know what TPM/nicotine means?

25 A TPM stands for total particulate matter, which

1 is another way of saying tar.

2 Q And then it appears this document has been  
3 signed or initialed by C.J.R. and W.H.D.; correct?

4 A Yes, sir.

5 Q C.J.R. is Mr. Rosene?

6 A I would presume so, sir.

7 Q And the W.H.D. would be Dr. Deines?

8 A I would presume so, sir, yes.

9 Q Do you know who he is?

10 A He was a researcher in R&D.

11 (Deposition Exhibit Gordon 9 was marked.)

12 Q Mr. Gordon, you have been handed what has been  
13 marked as Exhibit 9; correct?

14 A Yes, sir.

15 Q This document says, "Brown & Williamson  
16 Tobacco Corporation, Research Department, Restricted,  
17 Further Studies on Nicotine Containing Tobacco  
18 Substitutes"; correct?

19 A Yes, sir.

20 Q Could you tell me who Dr. R.R. Johnson is?

21 A A researcher in R&D.

22 Q Do you see the distribution list?

23 A Yes, sir.

24 Q Are all of those persons Brown & Williamson  
25 employees?

- 1           A     No, sir.
- 2           Q     Can you point out the ones who are not?
- 3           A     Dr. Binns, Dr. Dunn, Mr. Heard, Dr. Kausch,
- 4 Dr. Massey, Mr. McGregor, Mr. Rittershaus, Dr. de
- 5 Siqueira are not Brown & Williamson employees.
- 6           Q     The rest are?
- 7           A     Yes, sir.
- 8           Q     Who does Dr. Binns work for?
- 9           A     I'm not certain.
- 10          Q     You just know it's not Brown & Williamson?
- 11          A     I believe it's BATCo.
- 12          Q     What about Dr. Dunn?
- 13          A     Imperial Canada.
- 14          Q     Mr. Heard?
- 15          A     BATCo.
- 16          Q     Dr. Kausch?
- 17          A     BATCF.
- 18          Q     Dr. Massey?
- 19          A     Imperial Canada.
- 20          Q     Mr. McGregor?
- 21          A     Wills Australia.
- 22          Q     And Mr. Rittershaus is Germany?
- 23          A     Yes, sir.
- 24          Q     And Dr. de Siqueira is Souza Cruz?
- 25          A     Yes, sir.

1       answer to the question without reading  
2       anything in particular?

3               THE WITNESS: No, I don't.

4               MR. McGAAN: Do you want him to  
5       go ahead and read through it?

6               MR. HERRINGTON: I'm going to  
7       ask him a very directed question.

8               MR. McGAAN: Maybe you should  
9       go ahead and ask away, and then if he  
10       wants to read more -- if it's necessary,  
11       you ought to do that.

12 BY MR. HERRINGTON:

13       Q       Have you read the first two paragraphs on the  
14       introduction?

15       A       Yes, sir.

16       Q       The second paragraph -- which is continuing to  
17       talk about that prior report; correct? Does it appear  
18       to talk about the prior report mentioned in paragraph  
19       one?

20       A       I can't say that for certain. It says,  
21       "Further work continued on this project."

22       Q       I'll pick up: "-- for an additional six  
23       months. The goal was to optimize and further  
24       characterize the tobacco substitute. Emphasis was  
25       placed on development of procedures and materials to

1 allow quick progress in projects directed towards  
2 chemosensory and analytical goals." Do you have any  
3 idea what those chemosensory and analytical goals are?

4 A No, sir.

5 Q Do you have any idea what that means?

6 A No, sir, not in this context.

7 Q Does Brown & Williamson today sell any  
8 nicotine-containing tobacco substitutes?

9 A No, sir.

10 Q Do you know why Brown & Williamson does not?

11 A No, I don't.

12 Q Could you turn to page 15. Actually, I'm  
13 sorry, page 14, the heading toward the bottom there. It  
14 says, "Tobacco Substitute Smoke Composition."

15 A Yes, sir.

16 Q It says, "The main commercial advantages of  
17 nicotine containing tobacco substitutes are low tar and  
18 a much simpler tar for a given delivery of nicotine";  
19 correct?

20 A That's what that sentence says.

21 Q If you'll turn to page 15, the very last  
22 sentence of that section says, "In summary, the smoke  
23 composition studies show decreasing complexity with  
24 decreasing volatility of smoke"; correct?

25 A Yes, sir.

1 Q Do you know what that last sentence means?

2 A No, sir.

3 Q And then the next heading says Further Work.

4 That paragraph says, "BAT workers in Southampton are  
5 following up on this work in connection with Project  
6 GREENDOT. We have no immediate plans to continue  
7 development of nicotine-containing tobacco substitutes,  
8 but will make samples as needed to support projects with  
9 analytical or sensory goals." Can you tell me why BAT  
10 has no immediate plans to continue development of the  
11 nicotine-containing tobacco substitute?

12 A No, sir, I can't.

13 (Deposition Exhibit Gordon 10 was marked.)

14 Q Mr. Gordon, you've been handed Exhibit 10.  
15 Have you ever seen this document before?

16 A I don't recall, sir.

17 Q You don't recall ever seeing this document?

18 A I just don't recall.

19 Q This document is entitled Notes on a Visit to  
20 Brown & Williamson R&D, Louisville, 10th through 12th  
21 November 1986, A.L. Heard; correct?

22 A Yes, sir.

23 Q In the middle of the first paragraph there  
24 under Background, it says, "Presentations were made over  
25 three days by principal researchers with their team in

1 attendance. The R&D management team were present  
2 throughout." Do you recall attending this meeting?

3 A No, sir, I don't recall.

4 Q Could you turn to page two, please. Do you  
5 see under Smoking and Health Issues?

6 A Yes, sir.

7 Q Could you read, look over those four  
8 paragraphs under there and point out any mention of  
9 tests to determine whether smoking causes cancer.

10 A I don't see those words specifically in any of  
11 those paragraphs.

12 Q Do you see anything in there that would cause  
13 you to believe --

14 A I couldn't comment on this.

15 Q Would you turn again to page one, please. I  
16 want to read this background paragraph. It says,  
17 "During the Research Conference in September I agreed  
18 with Earl Kohnhorst that my next co-ordination visit to  
19 B&W would be used as an opportunity to review formerly  
20 all the projects in progress." Have I read that  
21 correctly?

22 A Yes, sir.

23 Q Would you agree with me this was written by  
24 A.L. Heard?

25 A It would appear to be, sir, but there is no



1 signature on it.

2 Q You are right, there is no signature on it.

3 From the statement that I just read where it says,

4 "During the Research Conference in September, I agreed

5 with Earl Kohnhorst my next co-ordination visit to B&W

6 would be used as an opportunity to review formerly all

7 the projects in progress," would it appear that this

8 meeting November 10 through 12 is that next coordination

9 visit that he's referring to right there?

10 A You could interpret that from that. I

11 couldn't say that's for certain.

12 Q It wouldn't be absurd to interpret it that

13 way, would it?

14 A No, sir.

15 Q He says he's using this visit as an

16 opportunity to review formally all the projects in

17 progress; correct?

18 MR. McGAAN: Object; calls for

19 speculation; mischaracterizes the

20 document.

21 BY MR. HERRINGTON:

22 Q Is that what that sentence says?

23 A It says he agreed with Earl that the next

24 visit would be to do that.

25 Q To review formerly all the projects in

1 progress; correct?

2 A That's what that sentence says.

3 Q Could you take a moment and look over all the  
4 different things he talks about in this document and  
5 point to, tell me where anywhere he talks about B&W  
6 tests done to determine whether smoking causes cancer or  
7 any disease.

8 MR. McGAAN: I'm going to  
9 object to the question. It lacks  
10 foundation with respect to this document,  
11 but you can go ahead and answer it.

12 A I don't know what I'm qualified to, whether  
13 I'm qualified to answer something like that. I'm not a  
14 smoking and health expert.

15 Q As you reviewed this document, did you see  
16 anything in here that talked about testing to determine  
17 whether smoking causes cancer?

18 MR. McGAAN: Same objection.

19 BY MR. HERRINGTON:

20 Q I asked did you see any reference to any  
21 project.

22 A I don't feel that I can comment on all these  
23 projects in here from that standpoint. I'm not an  
24 expert.

25 Q I understand you are not an expert. I'm just

1 saying, as you sit here today and you read those  
2 descriptions of the project, can you point out any that  
3 talk about --

4 A Sir, I cannot point out any because I am not  
5 expert in that area.

6 Q Your answer is you can't --

7 MR. McGAAN: Move to strike  
8 counsel's comment. His answer is what it  
9 is.

10 MR. HERRINGTON: I want to make  
11 sure I understand it.

12 BY MR. HERRINGTON:

13 Q Was your answer that you can't point out any  
14 references to tests being done to determine whether  
15 smoking causes cancer or any other disease?

16 MR. McGAAN: Object. He  
17 answered that question. You can answer  
18 it again.

19 A Not being an expert, I can't point out whether  
20 these projects do or do not do that in total because I'm  
21 not an expert in that field.

22 (Deposition Exhibit Gordon 11 was marked.)

23 Q Mr. Gordon, you've been handed what has been  
24 marked as Exhibit 11, and I would like for you just to  
25 take a few moments to look over it, please.

1           Exhibit 11 appears to be an April 21st, 1988  
2 memo from D.L. Gordon, which is you; correct?

3           A     Yes, sir.

4           Q     To M.L. Reynolds and T.F. Riehl; correct?

5           A     Yes, sir.

6           Q     Both of whom are Brown & Williamson employees;  
7 correct?

8           A     At that time, sir, yes.

9           Q     And the subject is strategic issues/393;  
10 correct?

11          A     Yes, sir.

12          Q     Do you know what that 393 refers to?

13          A     It's a project file number.

14          Q     The last sentence of your transmittal letter  
15 says, "I would propose we get together as a group during  
16 the week of May 9, 1988 to review and plot our plans for  
17 your June discussions"; correct?

18          A     Yes, sir.

19          Q     What are you talking about when you say June  
20 discussions?

21          A     Specifically I don't recall.

22          Q     Did Mr. Reynolds and Mr. Riehl -- what was Mr.  
23 Reynolds at this time? What was his position?

24          A     Mr. Reynolds and Mr. Riehl, one was director  
25 of product development and one was director of research.

1 Q Do you know if -- you say plot our plans for  
2 your June discussions -- Mr. Reynolds and Mr. Riehl got  
3 together from time to time to discuss strategic issues?

4 A Or discuss them with Brown & Williamson  
5 management.

6 Q Turn to the second page of the document,  
7 please. At the top it says R&D and then it says Whither  
8 or Wither; correct?

9 A Yes.

10 Q Could you please read the second -- you've  
11 already read this. The second paragraph there, the last  
12 sentence is what I want to read to you where it says,  
13 "Yet, there are many fears -- "

14 A Okay.

15 Q "-- over the price paid for this success  
16 including, number one, quality of jobs done; number two,  
17 increasing staff age; number three, decreasing staff  
18 morale/opportunities; and, four, focus only on  
19 short-term/immediate payback projects"; correct?

20 A Yes, sir.

21 Q Would you please tell me what are short-term/  
22 immediate payback projects?

23 A Well, projects that we worked on at R&D, a lot  
24 of those had focus on immediate application in our  
25 commercial products.

1 Q Could you give me an example, please?

2 A Many of your product development projects  
3 might be, as we were talking earlier SUPERIORITY, to  
4 obtain a superior product to Marlboro to use  
5 commercially quickly.

6 Q Were any of those projects focusing on  
7 creating a safer cigarette?

8 A I'm not sure I can define what safer cigarette  
9 is, sir.

10 Q Next paragraph says, "Meanwhile, the  
11 environment we face has been changing. And, while we  
12 have focused on the short term business needs of the  
13 organization, we have not kept our products and  
14 technology in tune with the shifting environment. The  
15 smoking public is being faced with increased pressure  
16 from all fronts."

17 Q Could you tell me what environment you are  
18 talking about when you say meanwhile the environment is  
19 being changed?

20 A I was referring to the business environment in  
21 which we operate.

22 Q Would you look at the very last sentence of  
23 this page. It says, "Yet, also in this time frame, we  
24 have effectively abandoned longer range research aimed  
25 at the shifting consumer and legislative environment."

1 Could you tell me what you meant by that?

2       A     Well, we had -- just having read this thing,  
3 again, this was a piece that I prepared to challenge are  
4 we headed in the right direction. We were spending a  
5 lot of time in R&D on some things like processing,  
6 materials consolidation, IG, physical quality  
7 improvement, all of which are attributes of our products  
8 that we want. At the same time, one would like to spend  
9 more time on -- and I didn't think we were giving enough  
10 emphasis to things like, for example maybe, low  
11 sidestream products.

12       Q     When you say sidestream, are you talking about  
13 environmental tobacco smoke?

14       A     Sidestream meaning smoke that does not come  
15 out of the cigarette to the smoker but comes out the lit  
16 end of the cigarette into the room or into the  
17 environment.

18       Q     Is that what's commonly called secondhand  
19 smoke?

20               MR. McGAAN: I object; vague as  
21 to who might call it that.

22       A     Sidestream smoke. It's not mainstream  
23 delivered to the smoker. So as an example, we may not  
24 have been putting what in my opinion was sufficient  
25 research resources behind those projects at that

1 specific point in time.

2 Q When you talk about effectively abandoning  
3 longer range research aimed at the shifting consumer and  
4 legislative environment, aren't you really pretty much  
5 saying at this point Brown & Williamson has just  
6 abandoned research on trying to figure out whether  
7 smoking causes cancer?

8 MR. McGAAN: Object;  
9 argumentative; assumes facts not in  
10 evidence.

11 A No, sir. I did not mean that with this  
12 sentence at all.

13 Q On the third page, the very top sentence says,  
14 "Our competition has not been idle. In terms of overall  
15 staff size, all, underlined, of our competitors have at  
16 least maintained staff levels over the past two years.  
17 While we have been losing staff, even the other smaller  
18 companies have maintained or increased." How did you  
19 know what your competitors were doing regarding their  
20 staff levels?

21 A The R&D staff levels are reported in the  
22 public journals. It's like the American Directory of  
23 Research or something like that.

24 Q Do you know what they were researching?

25 A Specifically, no, sir.



1           Q     If you'll look down under Technology, you have  
2     AIRBUS, evolutionary products, address social, slash,  
3     legislative concerns, address personal concern issues.  
4     We've talked about AIRBUS. Could you tell me what those  
5     other three are?

6           A     Well, evolutionary products would be products  
7     that do move, I believe, products that would be  
8     evolutionary from today's current products in one form  
9     or another. An example of this would be Capris, which  
10    is a much skinnier product than had been there before.  
11    So it was an evolutionary move. It wasn't a totally  
12    different smoking experience, for example, as Premier  
13    was.

14          Q     What about -- under Technology, you have  
15    addressed social legislative concerns. What do you mean  
16    there?

17          A     These would be things like the ETS issues,  
18    fire safety issues.

19          Q     What about address personal concern issues?

20          A     That would be to, say, if some consumers  
21    believe that there is something wrong with our products,  
22    then should we be working on the products to address  
23    consumers who are concerned.

24          Q     Would one of those concerns be whether smoking  
25    causes cancer?

1           A     I mean, some people may find or some people  
2     may believe that our products do that. I don't think  
3     that's ever been demonstrated or proven. Whatever the  
4     right personal concern issues are, that would be the  
5     right thing to do.

6           Q     I'm just asking when you say we need to  
7     address personal concern issues --

8           A     It could be all kinds of topics from delivery  
9     to gas phase, to whatever consumers could be concerned  
10    about.

11          Q     On the next page you have Has R&d Paid Its  
12    Way. The next-to-the-last item says firefighting. What  
13    do you mean there?

14          A     We were often called upon to help  
15    manufacturing in specific problems or issues they had,  
16    so we called that firefighting. We had to send people  
17    off to deal with specific manufacturing problems.

18          Q     Would this also include whenever a report  
19    would come out by some medical authority saying smoking  
20    causes cancer, R&D had to be quick to form some  
21    response?

22          A     No, sir. This was specific to our  
23    manufacturing or leaf plants.

24          Q     Was that a priority, a project, or a task at  
25    the R&D department to come up with countering research

1 whenever negative research came out about smoking?

2 A I just don't know.

3 Q Well, there is a period when you developed or  
4 you formulated the R&D plan for Brown & Williamson;  
5 correct?

6 A When I advised on that, that's during this  
7 period, yes, sir.

8 Q I believe your testimony was that you would  
9 receive plans from each of the departments within R&D?

10 A Yes, sir.

11 Q And then come up with an overall plan?

12 A Yes, sir.

13 Q Included in that overall plan, were there ever  
14 any directives or projects to find out whether smoking  
15 caused cancer?

16 A I can't recall any specific projects at B&W  
17 done internally that we did that.

18 Q And the same question for heart disease.

19 A Yes, sir. I don't know of any projects that  
20 we did internally to do that.

21 Q Do you know of projects externally being done?

22 A Brown & Williamson, I believe, funded external  
23 research.

24 Q Was the research done here in America?

25 A It would have been outside. I know there was

1 Council for Tobacco Research and others that we funded.

2 Q How was that funded?

3 A I don't know.

4 Q Was that something that was done or decided by  
5 higher-ups in Brown & Williamson?

6 A I don't know, sir.

7 Q Was it just communicated to you during the  
8 time period we are talking about that R&D, Brown &  
9 Williamson R&D, is not going to do any internal  
10 biological research, we are going to do that all  
11 externally?

12 MR. McGAAN: Object. Unless  
13 you mean to change the question, you are  
14 now talking about something different  
15 than when you were before when you  
16 referred to biological research. Maybe  
17 you are not. I think it's misleading.

18 BY MR. HERRINGTON:

19 Q Was it ever communicated to you that it was  
20 not necessary in formulating your R&D plan to include in  
21 it testing to determine whether smoking causes cancer or  
22 heart disease because that would be done externally?

23 A I can't ever recall whether that was  
24 specifically communicated to me or not communicated to  
25 me.

1 Q You don't know one way or the other?

2 A No. I don't recall one way or the other.

3 Q But you do know that no plan that you ever, no  
4 R&D plan over which you had authority included testing  
5 to determine whether smoking caused disease?

6 A No internal R&D plan with which I was familiar  
7 included that.

8 Q Could you turn to the fifth page. It's Bates  
9 stamp 520, the last three digits. The second item under  
10 Resource Allocation says, "How do we prevent taking of,  
11 quote, new projects, firefights, et cetera, that detract  
12 from major efforts?" Could you explain what you meant  
13 by that?

14 A It says, "How do we prevent taking on --"

15 Q I'm sorry.

16 A "-- new projects, firefights, et cetera, that  
17 detract from major efforts." This is the same point  
18 that I made earlier, that issues would come in in  
19 manufacturing, what have you. They'd generate new  
20 projects and we'd have to put people on those issues  
21 with a limited budget. Those people ought to be dealing  
22 with some other issue.

23 Q Turn to the next page. This says, "Resource  
24 Allocation Continued, Should We Have More Efforts in  
25 Certain Areas?" It's got listed new products, product

1 research, parenthesis, ETS, firesafety, close  
2 parentheses, fundamental research. And then it also  
3 says some other things. The second item, ETS,  
4 firesafety, does that contain smoking and health?

5 A My recollection at the time firesafety was a  
6 concern over the potential regulation on cigarettes  
7 causing fire and how do you make cigarettes firesafe.  
8 The ETS, there were a number of accredited products that  
9 had come out with reduced sidestream or different aromas  
10 to sidestream. There was an issue on whether we should  
11 reduce ETS or change the odor of it.

12 Q Would you turn to the next page, please.  
13 Across the top of this document you have the headings  
14 Product, Key Projects, Priority, Manpower Assigned,  
15 Sufficiently Staffed. Was this a checklist that was to  
16 be filled out?

17 A Yes, sir.

18 Q Do you have any idea how this was filled out  
19 or whether it was ever filled out?

20 A I'm not certain that we ever did it or not.

21 Q The next page top of the page says Quality.  
22 The last item it says, "Are we doing the, quote/unquote,  
23 right things?" What are the right things?

24 A I don't know, sir. This was a challenge to  
25 say, as we do firefightings or other things, we may be

1 delaying projects or what have you. So the question was  
2 just a challenge to say are we working on the right  
3 things, right being whatever is our appropriate  
4 priorities.

5 Q What's the answer?

6 A I don't know. I was just raising the issue,  
7 sir.

8 Q Could you turn to the document with Bates  
9 stamp number ending 527. The heading at the top of the  
10 page is New Products/Technology Issues. The  
11 next-to-the-last item says, "No work on sidestream, ETS,  
12 firesafety, and other project research." And I'm asking  
13 why not.

14 A Well, I was -- I think this is just a  
15 continuing thing. I was suggesting we were not putting  
16 enough effort on these in a timely fashion, that we were  
17 doing some other things. I was questioning whether that  
18 was the right way to go.

19 Q The next one says, "No fundamental research,  
20 parentheses, all efforts are project focused. Spinoffs  
21 are few because of schedule pressures, close  
22 parentheses." What does that mean?

23 A Well, fundamental things like tobacco and  
24 smoke chemistry, identifying, furthering our knowledge  
25 on tobacco and smoke chemistry were all directed at

1 projects, so people were doing that to answer specific  
2 questions within a given project. A lot of times in R&D  
3 you get synergy from something creating another new  
4 idea, which you need time to follow that up. I'm  
5 suggesting here the schedules didn't allow us to do a  
6 lot of follow-up.

7 Q Could you turn to the page Bates stamp number  
8 ending 530, and then the second paragraph there, the  
9 third item from the bottom says, "No industry taboos."  
10 Do you see that?

11 A Yes, sir.

12 Q What do you mean there?

13 A I don't know. I'll look it over here.

14 Q The heading above that says, "Critical  
15 Environmental Factors."

16 A I don't know, sir.

17 Q Could that possibly mean nothing is off limits  
18 for the tobacco industry?

19 A I don't know, sir.

20 Q The next item says, "Some things we may need  
21 that we are not working on or even laying the ground  
22 for." You have biotesting and ETS. What do you mean  
23 when you say biotesting?

24 A We don't internally do any biological assays.

25 Q That's what you mean when you say biotesting,



1 biological research?

2 A Analytical biological testing.

3 Q You mean analytical biological testing?

4 A Yes, sir.

5 Q Why was Brown & Williamson not working on that  
6 or even laying the ground for it?

7 A Well, sir, to my knowledge, we've never done  
8 any analytical biological testing. I believe B.A.T. did  
9 some. It was an expense that we never took on.

10 Q Why are you reporting that this is  
11 something -- were you just stating as a fact, hey, this  
12 is something we are not working on or even laying the  
13 ground for?

14 A I was stating my opinion.

15 Q Did you think you should be doing that?

16 A I thought we should evaluate on whether we  
17 should be doing it internally.

18 Q Who made the call on whether or not to do  
19 biotesting internally?

20 A I don't know.

21 Q Did Brown & Williamson ever start doing  
22 internal biotesting?

23 A Not to my knowledge, no.

24 Q Do you know if any of your competitors were  
25 doing biotesting internally?

1           A     I believe they did.

2           Q     If you'll turn to the page that ends with  
3   Bates stamp number 532, at the top of the page, it says  
4   BAT, and the first bullet there says, "New funding plans  
5   will increase requirements to communicate and inform  
6   group." What are you talking about when you say funding  
7   plans?

8           A     In this specific context, I'm not sure. We  
9   provided, Brown & Williamson provided funds to B.A.T.  
10  for research efforts.

11          Q     Did you have to provide funds?

12          A     I couldn't answer that. I know we did provide  
13  funds.

14          Q     But you don't know whether you had to or not?

15          A     No.

16          Q     What are you talking about when you say  
17  increase requirements to communicate and inform group?  
18  What requirements are you talking about?

19          A     We were talking earlier about this data base  
20  of projects that would be a means of forming and  
21  communicating efforts, so how to best do that.

22          Q     Was it a requirement of Brown & Williamson to  
23  engage in that data base project?

24          A     We wanted to participate in that. I mean, if  
25  you are asking me if it was a requirement, from my

1 standpoint, that was something we wanted to do to  
2 interact with our colleagues in the other B.A.T.  
3 centers.

4 Q Very next page, Staffing Issues, it says,  
5 "Staff decreases." Why was the staff decreasing?

6 A I believe at the time staff had left and we  
7 had not replaced them.

8 Q Do you know why they hadn't been replaced?

9 A No, sir.

10 Q Could you turn to page ending 538. The top of  
11 this page it says Professional Staff, and it's got 1987,  
12 Current, and Projected. And for fundamental research,  
13 it's got the number seven under 1987, and then there is  
14 a zero for current, and there is a zero for projected.  
15 Does that seven under 1987, that means seven persons?

16 A Yes, sir, I believe that's what it says.

17 Q So why is the current, which would be circa  
18 1988, and a projected, be zero for fundamental research?

19 A That was my projection based on the current.  
20 It was not challenged. As I pointed out, as I said,  
21 this was early in 1988. This was written in April. So  
22 in 1987 we had some people working on these. Here is  
23 what we currently have. This is what I was saying the  
24 trend was based on what I resolved. And I've already  
25 noted we were doing a lot of work on support

1 firefighting, and I was questioning whether that was  
2 where we should be spending all of our resources short  
3 term.

4 Q Do you know if that zero ever turned into  
5 another number, a positive number? I guess it couldn't  
6 turn into a negative number.

7 A Yes, sir, I believe it did. We did put  
8 efforts into, more efforts into firesafety.

9 Q What was the Brown & Williamson reaction to  
10 your Whither or Wither document?

11 A I think I stimulated some thought.

12 Q You don't recall any direct comment?

13 A No, sir, I don't recall any direct comments.

14 Q Do you know if any of your ideas were  
15 implemented?

16 A I think that would be hard to say in  
17 recollection of this. As I said, I know we eventually  
18 put more efforts into fundamental research than we had  
19 before. I'd have to go over all these things to see if  
20 we reduced efforts in any places, so I'm certain that we  
21 did do some changes and shifts in direction.

22 (Deposition Exhibit Gordon 12 was marked.)

23 Q Mr. Gordon, you've been handed a document  
24 which has been labeled Exhibit 12, and I'm going to ask  
25 you to take a couple of minutes and read it, please.

1                   MR. McGAAN: While he's doing  
2                   that, let me make a statement for the  
3                   record. I'll object to the use of the  
4                   document and any questioning of the  
5                   witness regarding the document for these  
6                   reasons: This is a February 17, 1986  
7                   memorandum from Kendrick Wells to Ernie  
8                   Pebbles. Kendrick Wells was an, at the  
9                   time this document was written, in-house  
10                  lawyer at Brown & Williamson. Ernie  
11                  Pebbles was general counsel of the  
12                  company at the time. Two in-house  
13                  lawyers communicating with one another,  
14                  it is a privileged document.

15                 It also was stolen from the files of  
16                 Brown & Williamson, and I use the term  
17                 "stolen" advisedly. It was a criminal  
18                 act. The document was taken from the  
19                 files of Brown & Williamson and  
20                 improperly, in the view of Brown &  
21                 Williamson, illegally disseminated.

22                 For all those reasons, we object to  
23                 questioning regarding this document and I  
24                 instruct the witness not to answer any  
25                 questions regarding this document.

1           Let me go further. If we get  
2           rulings on this from the court in the  
3           state of Washington that may change that,  
4           I may change my position. This issue has  
5           been litigated, as you well know, in  
6           various jurisdictions to varying degrees  
7           of completion, so it's not an unfamiliar  
8           issue to those of us litigating these  
9           cases. That's where we stand in the  
10          state of the Washington.

11                 MR. HERRINGTON: So for the  
12           record, if I ask him anything about this  
13           document, you are going to instruct him  
14           not to answer?

15                 MR. McGAAN: That's right.

16 BY MR. HERRINGTON:

17           Q     Mr. Gordon, you've heard what Mr. McGaan has  
18           said. Are you going to refuse to answer based on advice  
19           of your counsel if I ask you anything about this  
20           document?

21           A     If I understood the question, yes, I will  
22           listen to advice of counsel and refuse to answer.

23                 MR. HERRINGTON: Rather than  
24           clutter the record with arguments of why  
25           we should be able to ask questions about

1           this, we'll defer it and take it before  
2           the judge at the appropriate time.

3                   MR. McGAAN: Yes. I don't take  
4           your silence on that as acquiescence to  
5           what I'm saying. I'll agree with you, we  
6           don't have to have the battle today.

7                   MR. HERRINGTON: You want to  
8           take a break?

9                               (Brief recess)

10 BY MR. HERRINGTON:

11           Q     Mr. Gordon, who did you interview with at  
12 Brown & Williamson when you were hired?

13           A     When I first joined the company? Dr. Sanford.  
14 Dr. Esterle, Norman Highcamp.

15           Q     Who is Highcamp?

16           A     He was head of the process development group  
17 in R&D at the time.

18           Q     Highcamp, Sanford, and who else?

19           A     Easterle.

20           Q     And what was Esterle's position at the time?

21           A     He was like director of research.

22           Q     Since you've been there, there have been  
23 people who have been hired in the R&D department, have  
24 there not?

25           A     Yes, sir.

1 Q Do you know of any incidence in which lawyers  
2 were present during the hiring process?

3 A I know of no such instances.

4 Q Do you know of any attorney input into who was  
5 hired in the R&D department?

6 A No, sir, I don't know about that.

7 Q Have any of the people that have come to work  
8 at Brown & Williamson R&D previously served in any other  
9 position within the BAT Group of companies?

10 A I'm sorry. Could you repeat that for me?

11 Q Sure. Have there been any employees -- has  
12 anyone come to the B&W R&D department that previously  
13 served in some occupation with another BAT Group  
14 company?

15 A I know we have had secondments.

16 Q I'm sorry. What is that?

17 A Where a person is stationed in Brown &  
18 Williamson on a temporary basis.

19 Q Could you spell that?

20 A "Second" and "ment."

21 Q Is that an English word?

22 A Yes, sir.

23 Q And that's on an exchange program?

24 A Yes, sir.

25 Q Does that go on today?



- 1           A     Yes, sir.
- 2           Q     Was that going on back in 1972 when you were  
3 there?
- 4           A     I don't know, sir. I wasn't there in 1972  
5 anyway.
- 6           Q     I'm sorry. When you first got there?
- 7           A     I don't know, sir.
- 8           Q     What level of employee normally takes part in  
9 the secondment?
- 10          A     Various levels of employees.
- 11          Q     Well, give me an example, please.
- 12          A     We exchange analytical chemists or product  
13 developers or leaf blenders.
- 14          Q     Are these secondments for a set length of  
15 time?
- 16          A     Generally, yes.
- 17          Q     What length of time?
- 18          A     It could vary because of the assignment, sir.
- 19          Q     Are some of them for as long as a year?
- 20          A     Yes, sir.
- 21          Q     Are some more than a year?
- 22          A     I just don't know. I don't recall any right  
23 offhand, but they could be for longer than a year, I  
24 guess.
- 25          Q     What about management of B&W in general? Are

1 you aware of management personnel outside the R&D  
2 department who prior to coming to Brown & Williamson had  
3 occupations within other BAT Group companies?

4 A I know we have a current secondment in another  
5 area outside of R&D.

6 Q What area?

7 A I believe our senior VP of marketing is on  
8 secondment. And we sometimes have people on our leaf  
9 operations on secondment, but I don't know if we have  
10 any currently or not. I'm just not that familiar with  
11 it.

12 Q Where are these people coming from? Any  
13 particular organization?

14 A They come from any of the other BAT Group.

15 Q Could come from Souza Cruz, it could come from  
16 BATCo.?

17 A Yes, sir.

18 Q Do the majority of these secondments come from  
19 any particular BAT Group company?

20 A I couldn't answer that, sir.

21 Q Do you ever have contacts with other tobacco  
22 company employees, Philip Morris, RJR, in your official  
23 capacity?

24 A Yes, sir.

25 Q And what's the nature of those contacts?

1           A     Well, we have contracts with some of our  
2 competitors for specific items.

3           Q     Contracts?

4           A     Yes, sir.

5           Q     Do you have any contacts with R&D personnel of  
6 your competitors?

7           A     I have attended conferences in the past when  
8 members from R&D of other competitors were present.

9           Q     What have you-all talked about?

10          A     Nothing. The weather.

11          Q     You don't talk about any R&D stuff?

12          A     No, sir.

13          Q     Have you ever heard of the Biological Testing  
14 Committee?

15          A     No, sir.

16          Q     You don't know what that is?

17          A     No.

18          Q     Have you ever heard of Project JANUS,  
19 J-A-N-U-S?

20          A     No, sir.

21          Q     We've seen some documents that you authored;  
22 correct?

23          A     Yes, sir.

24          Q     Have you ever authored any scientific reports  
25 for B&W?

1           A     I need a better definition of what a  
2 scientific report is, sir.

3           Q     Any reports on scientific testing. Does that  
4 help you out any?

5           A     No, sir.

6           Q     In your current position, what type of things  
7 do you author?

8           A     My current position, I author our annual plan,  
9 periodically provide reports to our senior management on  
10 monthly status reports and things of this sort. I'm  
11 working on our disaster recovery plan.

12          Q     Have you ever had to distribute any of those  
13 plans that you just talked about to any attorneys?

14          A     No, sir, none of these that I mentioned.

15          Q     Do you know whether any attorneys ever saw the  
16 plans that you authored?

17          A     Well, the disaster recovery plan has a section  
18 in it that the legal department wrote for what their  
19 responsibilities are in that plan.

20          Q     Are you aware of any instances where attorneys  
21 altered scientific reports at Brown & Williamson?

22          A     No, sir.

23          Q     Are you aware of any instances where attorneys  
24 edited scientific reports?

25          A     No, sir.

- 1 Q Proofed scientific reports?
- 2 A No, just don't recall any.
- 3 Q What about reviewed?
- 4 A I don't recall any.
- 5 Q There are scientists within the R&D
- 6 department; correct?
- 7 A Yes, sir.
- 8 Q Do those scientists ever compile or author
- 9 scientific reports?
- 10 A Yes, sir.
- 11 Q To whom do those reports go normally?
- 12 A If you are asking me is there currently an R&D
- 13 distribution for who those reports go to, I don't know,
- 14 sir.
- 15 Q You don't know?
- 16 A No, sir.
- 17 Q Did you ever know of a standard distribution
- 18 chain?
- 19 A When I was in R&D and I wrote a report, there
- 20 was generally a distribution list that your manager put
- 21 on there. Whether that was a standard list, I can't
- 22 say.
- 23 Q Well, the list that you just made reference
- 24 to, were there ever attorneys on that list?
- 25 A I couldn't say. I'd have to go through every

1 report I ever authored and say who was on there or who  
2 wasn't.

3 Q I'm just asking do you recall as you sit here  
4 today.

5 A I don't recall.

6 Q Don't know one way or the other?

7 A I don't recall. I'm having to look at them.

8 Q You are saying there could be, there may not  
9 be, you just don't know?

10 A Exactly.

11 Q In your current position, do you consult with  
12 B&W attorneys? Let me just say I'm not asking for you  
13 to reveal any conversation, if you have. I'm wondering  
14 do you.

15 A Consult is a fairly vague term. I've already  
16 answered that. For example, I had to talk to an  
17 attorney on the disaster recovery plan because they had  
18 a section of what they had to do. Obviously, I talked  
19 to an attorney on that topic. I also have to talk to  
20 our attorneys when we have these contracts, make sure  
21 our contracts are right. So in that sense, yes, I do  
22 consult with Brown & Williamson attorneys on specific  
23 issues when I need them.

24 Q But in your official capacity at Brown &  
25 Williamson, have you ever met with attorneys in relation

1 to smoking and health litigation?

2 A I have been at meetings when attorneys gave  
3 status reports on here is what's going on in the world  
4 of litigation.

5 Q Do the attorneys instruct you to do anything  
6 in light of this litigation that's out there?

7 MR. McGAAN: Let me object and  
8 instruct the witness not to answer. And  
9 let me be real clear about my objection.  
10 It calls directly for -- it calls  
11 directly for conversations which, if they  
12 in fact occurred, would be privileged. I  
13 don't have any basis to believe any  
14 instructions were given to this witness  
15 by the lawyers with the company with  
16 regard to smoking health litigation in  
17 particular, but the way the question is  
18 phrased, it calls for, if such  
19 conversations in fact occurred,  
20 privileged communications.

21 BY MR. HERRINGTON:

22 Q Did you receive instructions from any  
23 attorneys at Brown & Williamson in how to conduct your  
24 job when you were at any position at Brown & Williamson?

25 MR. McGAAN: Same objection.

1           Please don't answer that question as  
2           phrased.

3   BY MR. HERRINGTON:

4           Q     What was your first position again at Brown &  
5     Williamson? Associate production engineer?

6           A     Associate process engineer.

7           Q     Did Brown & Williamson attorneys instruct you  
8     on how to perform your job?

9                   MR. McGAAN: As a process  
10           engineer?

11                   MR. HERRINGTON: As a process  
12           engineer.

13                   MR. McGAAN: I'll let him  
14           answer that

15           A     No, sir.

16           Q     We can speed this up. My question is as to  
17     any positions held, has any Brown & Williamson attorney  
18     instructed him how to perform that job in his capacity  
19     at whatever position he was.

20                   MR. McGAAN: I'll let him  
21           answer that question.

22                   MR. HERRINGTON: Rather than go  
23           through each position.

24           A     I don't recall I have ever been instructed in  
25     my specific duties of my job by Brown & Williamson



1 lawyers what to do or not to do.

2 Q You don't recall whether you have?

3 A (Witness shook his head negatively.)

4 Q Are you familiar with the TRC, what is now the  
5 CTR?

6 A No, other than generally knowing that such a  
7 thing exists, no, sir.

8 MR. McGAAN: CTR was never  
9 known as TRC. There is a confusion.

10 BY MR. HERRINGTON:

11 Q TIRC. I'm talking about the Council for  
12 Tobacco Research.

13 A Yes, sir. Other than knowing generally  
14 something like that exists, no, sir, I'm not familiar  
15 with it.

16 Q You didn't have any involvement with it while  
17 you were at R&D?

18 A No, sir.

19 Q Mr. Gordon, do you smoke?

20 A Yes, sir.

21 Q Do you think smoking is addictive?

22 A No, sir.

23 Q Do you think smoking causes cancer?

24 A I do not think there has ever been any proven  
25 mechanism that smoking causes cancer, lung cancer.

1 Q What would it take for you to believe that  
2 smoking causes cancer? You say there is no mechanism.  
3 I'm just wondering what you mean by that.

4 A There is no, to my knowledge, scientific or  
5 medical research that proves cause and effect.

6 Q Is there any substance on the planet that you  
7 believe has been proven to cause cancer?

8 A I couldn't answer that, sir.

9 Q You don't know?

10 A I don't know.

11 Q And why is it that you don't think smoking is  
12 addictive?

13 A Well, I think that addiction in my mind  
14 implies a lot of things in terms of intoxicating  
15 effects, antisocial behavior, inability to withdraw from  
16 use, increasing doses of use. Those are all the classic  
17 things under addiction, and I don't think smoking fits  
18 any of those in my mind.

19 MR. HERRINGTON: I don't have  
20 anything further. Thank you very much  
21 for your time.

22 EXAMINATION

23 BY MR. McGAAN:

24 Q Mr. Gordon, let me come back to the question  
25 of biological research for a minute.

1           A     Yes, sir.

2           Q     Do you know whether biological research was  
3 conducted at laboratories in Southampton, England?

4           A     Yes, sir, I'm generally aware it was.

5           Q     Those are BATCo. laboratories?

6           A     Yes, sir.

7           Q     So to your knowledge, biological research was  
8 done internally at BATCo. laboratories in Southampton  
9 over time?

10          A     Yes, sir.

11          Q     Do you know in general whether reports of that  
12 sort of research were sent to Brown & Williamson?

13          A     Generally, yes.

14          Q     Do you know whether Brown & Williamson funded  
15 research that took place in BATCo. laboratories in  
16 Southampton over time?

17          A     Yes, sir.

18          Q     Now, has biological research been the focus of  
19 your job responsibilities during any point in your  
20 tenure at Brown & Williamson?

21          A     No, sir, it's not in my area of expertise.

22                   MR. McGAAN: That's all I have.

23                   MR. HERRINGTON: You want to  
24 read and sign?

25                   MR. McGAAN: Yes. You don't

1           have anything else?

2                   MR. HERRINGTON:  No.

3                   MR. McGAAN:  We'll reserve the  
4           right to read and sign.

5

6                   (Deposition concluded 4:30 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## E R R A T A   S H E E T

Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure and/or Georgia Code Annotated 81A-130(B)(6)(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

I, the undersigned, DAVID LEE GORDON, do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).

Page\_\_\_\_\_ Line\_\_\_\_\_ should read:\_\_\_\_\_

Reason for change:\_\_\_\_\_

Page\_\_\_\_\_ Line\_\_\_\_\_ should read:\_\_\_\_\_

Reason for change:\_\_\_\_\_

Page\_\_\_\_\_ Line\_\_\_\_\_ should read:\_\_\_\_\_

Reason for change:\_\_\_\_\_

Page\_\_\_\_\_ Line\_\_\_\_\_ should read:\_\_\_\_\_

Reason for change:\_\_\_\_\_

- 1 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
2 Reason for change: \_\_\_\_\_  
3 \_\_\_\_\_  
4 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
5 Reason for change: \_\_\_\_\_  
6 \_\_\_\_\_  
7 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
8 Reason for change: \_\_\_\_\_  
9 \_\_\_\_\_  
10 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
11 Reason for change: \_\_\_\_\_  
12 \_\_\_\_\_  
13 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
14 Reason for change: \_\_\_\_\_  
15 \_\_\_\_\_  
16 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
17 Reason for change: \_\_\_\_\_  
18 \_\_\_\_\_  
19 Page\_\_\_\_\_ Line\_\_\_\_\_ should read: \_\_\_\_\_  
20 Reason for change: \_\_\_\_\_  
21 \_\_\_\_\_  
22 \_\_\_\_\_  
23 \_\_\_\_\_  
24 Sworn to and Subscribed before me  
\_\_\_\_\_, Notary Public.  
This \_\_\_\_\_ day of \_\_\_\_\_, 1997.  
25 My commission expires: \_\_\_\_\_ BH

## C E R T I F I C A T E

G E O R G I A:

FULTON COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and the answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 182 represent a true and correct transcript of the evidence given. And I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in any way financially interested in the result of said case.

Disclosure pursuant to OCGA 9-11-28(d): The party taking this deposition will receive the original and one copy based on our standard and customary per-page charges. Copies to other parties will be furnished at one-half that per-page rate. Incidental direct expenses of production may be added to either party where applicable.

This, the 24th day of November, 1997.

BARBARA HILGER, RPR  
CCR A-295  
My commission expires 1/16/98.